United States Court of Appeals

for the Second Circuit



APPELLANT'S APPENDIX

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74-2617

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P/S

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

THE LUPARAR, JOHN SHUTTLE, Editor of Luparar, CRAIG MURRAY, Individually and on behalf of all others similarly situated,
Plaintiffs-Appellees,

v.

R. KENT STONEMAN, Individually and as Commissioner of the Department of Corrections of the State of Vermont, MICHAEL MOEYKENS, Individually and as Acting Warden of the Vermont State Prison at Windsor, Vermont,
Defendant-Appellants.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF VERMONT

APPENDIX OF DEFENDANTS-APPELLANTS

UNITED STATES COURT OF APPEALS
FILED
FEB 27 1975
A. DANIEL FUSARO, CLERK
SECOND CIRCUIT

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UNITED STATES DISTRICT COURT

Civ. 73-95

Jury demand date:

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D. C. Form No. 106 Rev.

TITLE OF CASE	ATTORNEYS
THE LUPARAR; JOHN SHUTTLE, EDITOR OF LUPARAR; CRAIG MURRAY, individually and on behalf of all others similarly situated vs. R. KENT STONEMAN, individually and as Commissioner of the Department of Corrections of the State of Vermont; MICHAEL MOEYKENS, individually and as acting warden of the Vermont State Prison at Windsor, Vermont	For plaintiff: ~~Richard S. Kohn, Esq.~~ ~~Vermont Legal Aid, Inc.~~ ~~56 Railroad Street~~ ~~St. Johnsbury,~~ Vermont Paul Berch, Esq. South Pomfret, Vermont Richard S. Kohn, Esq. ACLU of Vt., Inc. 5 State Street Montpelier, Vt. For defendant: Attorney General-Vermont

STATISTICAL RECORD	COSTS	DATE	NAME OR RECEIPT NO.	REC.	DISB
S. 5 mailed MAY 4 1973	Clerk	1973 4-3	#20919	15 00	
		4-9	C.D. #44		15 00
S. 6 mailed OCT 4 1974	Marshal	1974			
		12-9	#23531	5 00	
asis of Action: Declaratory Injunctive Relief	Docket fee	" "	CD #25		5 00
	Witness fees				
...tion arose at: 2	Depositions				
	iv				

DATE	PROCEEDINGS	Date Order Judgment No.
1973		
Apr. 3	Filed Complaint.	1.
" "	Issued Summons.	
" 12	Filed Summons returned served.	2.
May 11	Filed Defts.' Answer.	3.
July 26	Filed deposition of Julius B. Moeykens.	4.
" 31	" Brief for Pltfs.	5.
Sept. 24	Filed Deposition of Kent Stoneman.	6.
Nov. 20	" Notice of Appearance of Richard S. Kohn, Esq., as counsel to the American Civil Liberties Union of Vermont, Inc.	7.
1974		
Feb. 12	At the Call of the Calendar before Judge Coffrin, upon consideration	
" "	ORDERED of application of VLA, Inc. to withdraw appearance for Pltff, it is	
" "	ORDERED: VLA, Inc. is no longer in case. And that a pre-trial conference be held.	
Apr. 11	Filed Notice of Pretrial Conference sch. 5-14-74 at 10:30 A.M.	8.
May 13	Filed Defendant's Motion to Dismiss and/or for Summary Judgment.	9.
" "	Filed Defts.' Memorandum in support of Motion to Dismiss or, in the Alternative, Motion for Summary Judgment.	10.
" "	Filed Affidavit.	11.
May 14	In Chambers, Pretrial Conference held before Judge Coffrin. Richard Kohn, Esq. for Plaintiffs; Charles Bristow, Esq. and Alan Cook, Esq. for Defendants.	
" "	Statements made to Court by Mr. Kohn, followed by Mr. Cook and Mr. Bristow.	
" "	With respect to defendants' motion to dismiss and/or for summary judgment, plaintiffs have until June 1, 1974 to file memorandum in response thereto.	
" 17	Filed Affidavit.	12.
" 31	Ordered: Plaintiff granted one week to file briefs. Attys. notified.	
June 11	Filed Plaintiffs' Motion for Summary Judgment.	13
" "	Filed Memorandum opposing Defts.' Motion to Dismiss and in support of Plaintiffs' Motion for Summary Judgment.	14
July 2	Filed Plaintiffs' Motion to Maintain Class Action and Affidavit in support of Motion to Maintain Class Action.	15
" 15	" Defts' Memorandum in opposition to class action and Motion to drop parties, Memorandum of Law in support of Motion to drop parties.	16
July 19	" Pltfs' Motion to exclude newspaper clippings submitted by the defts. in support of their Motion for Summary Judgment.	17
" "	" Pltfs' Reply to defts' Motion to drop parties.	18
" "	" Defts' Affidavit re insurance policy.	19
Sept. 17	At the Call of the Calendar before Judge Coffrin, it is	
"	ORDERED: case passed.	
" 30	Filed Opinion and Order - to cease suppression of the January, 1973, issue of The Luparar, to return the copies of that issue that they seized to the editor and staff of The Luparar, to permit that issue to be mailed to subscribers outside the prison, to promulgate regulations dealing with the publication of the newspaper if there is continued interest in publishing it, and to provide a review procedure in those regulations in accordance with that described earlier in this opinion. Copy mailed to attorneys.	20.
Oct. 9	Filed defendants' motion alternatively for new trial, rehearing or reargument of motion for summary judgment.	21
" "	" Memorandum in support of above motion.	22.

Civ. 73-95 The Luparar, et al vs. R. Kent Stoneman, etc.

D. C. 110 Rev. Civil Docket Continuation

DATE 1974	PROCEEDINGS	Date Order Judgment No.
Oct. 9	Filed Order -- this Court's Judgment Order entered on 9/30/74 is temporarily stayed pending a hearing on said motions and the further order of the Court in regard thereto.	23.
" 10	" plaintiffs' motion under Rule 70 of Federal Rules of Civil Procedure.	24.
" 15	" Memorandum in Response to Pltfs' Motion under Rule 70.	25.
" 18	" Plaintiffs' memorandum in opposition to defendants' motion for reconsideration of Summary Judgment and motion for stay.	26.
Nov. 18	In Chambers before Judge Coffrin. Paul Berch, Esq. and Richard S. Kohn, Esq., for Plaintiffs. Alan W. Cook, Ass't. Attorney General, for Defendants.	
" "	Hearing on Defendants' Motion for Reconsideration and Stay.	
" "	Statements made to Court by Mr. Cook in support of his motion, objected to by Mr. Kohn who requests the Court to vacate the temporary Stay that has been granted.	
" "	Taken under advisement.	
" "	Hearing on Plaintiffs' Motion Under Rule 70, FRCP.	
" "	Statements made to Court by Mr. Kohn.	
" "	ORDERED: Plaintiffs' Motion Under Rule 70, FRCP is denied.	
" 21	Filed Amended Opinion and Order and Order - -(1) That the language set forth on pages 12 and 13 of this Court's September 30, 1974, opinion with reference to the guidelines or regulations for the publication of a prison newspaper and for a review procedure of material submitted for publication therein shall be construed as suggestions only as to the type and nature of due process which the Court would find acceptable to safeguard first amendment rights and shall not be interpreted as a madate with defendants need comply exactly. To the extent necessary to affect this change, the language of the opinion may be considered amended accordingly. (2) That this Court's order filed September 30, 1974, is amended to read as follows; defendants or their successors are hereby ORDERED: to cease suppression of the January, 1973, issue of the Luparar, to return the copies of that issue that they seized to the editor and staff of THE LUPARAR and to permit that issue to be mailed to subscribers outside the prison. (3) That defendants' motion for a new trial, rehearing or reargument of defendants' motion for summary judgment is denied. (4) That this Court's temporary stay of execution issued October 9, 1974, is dissolved and defendants' motion for a stay of execution pending the taking and pendency of an appeal is denied. (5) That plaintiff's motion under Rule 70 of the Federal Rules of Civil Procedure for an order enforcing its madate is denied. Mailed copy to attorneys.	27.
" 20	Filed Defts' Notice of Appeal. Mailed copy to Paul Berch, Esq., Richard S. Kohn, Esq., Attorney General - State of Vt., Judge Coffrin, Court Reporters and Clerk, U. S. Court of Appeals for the Second Circuit.	28.
Dec. 16 1975	" Transcript of Pretrial Conference held 5-14-74.	29.
Jan. 3	Mailed Record on Appeal to Clerk, U. S. Court of Appeals for the Second Circuit. Attys. notified.	
" 7	Filed Interim policy effective 12-21-74.	30.

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF VERMONT

THE LUPARAR; JOHN SHUTTLE, Editor of The Luparar; CRAIG MURRAY, individually and on behalf of all others similarly situated	:	
v.	:	Civil Action Docket No. 73-95
R. KENT STONEMAN, individually and as Commissioner of the Department of Corrections of the State of Vermont; MICHAEL MOEYKENS, individually and as acting warden of the Vermont State Prison at Windsor, Vermont	:	SUMMONS

TO THE ABOVE NAMED DEFENDANTS:

You are hereby summoned and required to serve upon Richard S. Kohn, plaintiffs' attorney, whose address is 56 Railroad Street, St. Johnsbury, Vermont, an answer to the complaint which is herewith served upon you, within 20 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

Dated at Burlington, In the District of Vermont.

April 3, 1973
Date

/s/ EDWARD J. TRUDELL
Clerk of Court

BY: /s/ LEONARD W. LAFAYETTE
Deputy Clerk

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF VERMONT

THE LUPARAR; JOHN SHUTTLE, EDITOR OF LUPARAR; CRAIG MURRAY, individually and on behalf of all others similarly situated	:	Civil Action Docket No. 73-95
v.	:	
R. KENT STONEMAN, individually and as Commissioner of the Department of Corrections of the State of Vermont; MICHAEL MOEYKENS, individually and as acting warden of the Vermont State Prison at Windsor, Vermont	:	COMPLAINT

I.

1. This is an action for declaratory and injunctive relief pursuant to 42 U.S.C. § 1983, to declare invalid the actions of the defendants in suppressing the January issue (Vol. VI No. 2) of the Luparar, the inmate newspaper at the Vermont State Prison, in violation of the First and Fourteenth Amendments to the United States Constitution. Jurisdiction is predicated on 28 U.S.C. §1343(3).

II.
FACTUAL STATEMENT

2. The Luparar has been published by the inmates of the Vermont State Prison since December 1971. It is printed within the prison on the prison press and is widely distributed both within the Department of Corrections facilities and to the general public.

3. Each issue of The Luparar has been approved by a staff member before publication. The cost of producing each issue is approximately thirty dollars, which cost is born by the inmate fund.

4. On January 4, 1973, a draft of the January issue was approved for publication by the Director of Education for the Vermont State Prison, O.C. Tussler.

5. On January 5, 1973, the January issue was printed, assembled and stamped and was ready for distribution.

6. On or about January 6, 1973, acting warden Moeykens notified staff members of The Luparar that the issue could not be distributed.

7. On January 6 and again on January 8, 1973, The Luparar staff attempted to mail copies of the January issue to addresses outside the prison, but the mailman refused to accept them for mailing even though they were duly stamped and addressed.

III.
STATEMENT OF CLAIM

8. The action of the Department of Corrections in suppressing the January issue of The Luparar and refusing to permit it to be mailed outside the prison constitutes a prior restraint in violation of the First Amendment to the United States Constitution.

9. The suppression of the January issue of The Luparar and the refusal to allow its distribution outside the prison without a prior hearing violates due process of law protected by the First and Fourteenth Amendments to the United States Constitution.

10. The restriction on attacking personalities which the Department of Corrections imposes as a condition of publication constitutes an unconstitutional condition on publication in violation of the First and Fourteenth Amendments of the United

States Constitution.

11. The action of the Corrections Department in suppressing the January issue of The Luparar and preventing its distribution outside the prison violates the right to hear and receive information of plaintiffs Craig Murray and all others similarly situated, in violation of the First and Fourteenth Amendments to the United States Constitution.

12. A rule that articles in a prison newspaper must attack issues and not personalities is vague and overbroad and thereby violates the First and Fourteenth Amendments of the United States Constitution.

IV.
PARTIES

13. Plaintiff John Shuttle is a citizen of the United States residing in Windsor, Vermont and at all material times has been editor of The Luparar.

14. The Luparar is an inmate publication of the Vermont State Prison at Windsor, Vermont.

15. Plaintiff Craig Murray is a citizen of the United States and Vermont residing in Windsor, Vermont and is a subscriber to The Luparar by mail and is the Executive Director of the Vermont Chapter of the A.C.L.U.; an organization interested in the free flow of ideas and information. Mr. Murray did not receive the January issue of The Luparar by mail.

16. Defendant Stoneman is commissioner of Corrections for the State of Vermont and as such is charged with the administration of correctional facilities.

17. Defendant Moeykens is acting warden of the Vermont State Prison and in that capacity directed that the January issue of The Luparar be suppressed and that it not be sent outside the prison.

V.
CLASS ACTION

18. Plaintiffs represent the class of persons who are on the mailing list of The Luparar and who did not receive the January issue due to the action of the defendants in refusing to permit that issue to be distribted. Plaintiffs sue on behalf of themselves and all others similarly situated;pursuant to Rule 23, F.R.C.P.:

(a) The members of this class are so numerous that joinder of them all is impracticable;

(b) There are questions of law and fact common to all members of the class, and the common questions of law and fact predominate over any questions effecting only individual members of the class;

(c) The claims of the representative plaintiffs will fairly and adequately protect the interests of the class;

(d) Defendants have acted or refused to act on grounds generally applicable to the class;

(e) An adjudication of the rights of the named representatives of the class would, as a practical matter, be dispositive of the interests of all other members.

wherefore, petitioners pray:

(1) That the court take jurisdiction of this case;

(2) That the court declare the suppression of the January edition of The Luparar to be in violation of the First and Fourteenth Amendments to the United States Constitution;

(3) The court grant preliminary and permanent injunctive relief ordering the defendants, their agents and servants, to permit the distribution of the January issue of The Luparar, as presently constituted, outside the prison, and that said defendants be enjoined from interfering with the publishing and distribution of any future editions of The Luparar utilizing prison facilities without due process of law.

(4) That the court grant any and all further relief as the court shall deem meet and just.

March 26, 1973

/s/ Richard S. Kohn
RICHARD S. KOHN
Vermont Legal Aid, Inc.
56 Railroad Street
St. Johnsbury, Vermont

/s/ Paul Berch
PAUL BERCH
South Pomfret, Vermont
Attorneys for the Plaintiffs

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF VERMONT

THE LUPARAR; JOHN SHUTTLE, Editor of the Luparar; CRAIG MURRAY, individually and on behalf of all others similarly situated,	)	
Plaintiffs,	)	
vs.	)	
	)	CIVIL ACTION NO. 73-95
R. KENT STONEMAN, individually and as Commissioner of the Department of Corrections of the State of Vermont; MICHAEL MOEYKENS, individually and as acting warden of the Vermont State Prison at Windsor, Vermont,	)	
Defendants.	)	

ANSWER

NOW INTO COURT, through undersigned counsel, comes R. Kent Stoneman and Julius V. Moeykens, Defendants herein and answer Plaintiffs' Complaint as follows:

FIRST DEFENSE

The Complaint fails to state a claim against Defendants upon which relief can be granted.

SECOND DEFENSE

Defendants answer each of the numbered paragraphs contained in the Complaint as follows:

1. All allegations herein are denied.

2. Denied, except that it is admitted that The Luparar was printed within the prison in the past and that it was distributed both within and without the prison.

3. Denied, except that it is admitted that The Luparar was approved by the staff before publication, and that the cost of producing each issue was substantially more than $30.00.

4. Denied.

5. Denied, for lack of sufficient information to justify a belief.

6. Denied.

7. Admitted.

8. Denied.

9. Denied.

10. Denied.

11. Denied.

12. Denied.

13. Admitted.

14. Denied.

15. Admitted.

16. Admitted.

17. Denied, except that it is admitted that Defendant Moeykens is currently Supervising Officer of the State Correctional Facility - Windsor.

18. All allegations hereunder are denied.

THIRD DEFENSE

Further answering Plaintiffs' Complaint, Defendants affirmatively allege that at no time have Plaintiffs' constitutional rights been denied or abridged in any way by any acts of the Defendants.

WHEREFORE, Defendants pray that Plaintiffs' request for relief be denied and that their Complaint be dismissed.

KIMBERLY B. CHENEY
Attorney General
State of Vermont

By:
/s/ David E. Wilson
DAVID E. WILSON
Assistant Attorney General
Department of Corrections
State Office Building
Montpelier, Vermont 05602
Tel. 802/828-2452

CERTIFICATE OF SERVICE

This is to certify that on the 10th day of May, 1973, I served a copy of the above Defendants' Answer to Plaintiffs' Complaint with a copy of this Certificate appended thereto on the Plaintiffs in this matter, by mailing a true, conformed copy thereof in a sealed envelope, first-class postage prepaid to

Richard S. Kohn, Esq., 56 Railroad Street, St. Johnsbury, Vermont 05819.

/s/ David E. Wilson
DAVID E. WILSON
Assistant Attorney General
Department of Corrections

UNITED STATES DISTRICT COURT

DISTRICT OF VERMONT

THE LUPARAR: JOHN SHUTTLE, Editor of THE LUPARAR; CRAIG MURRAY, Individually and on behalf of all others similarly situated.

Plaintiffs

v.

R. KENT STONEMAN, Individually and as Commissioner of the Department of Corrections of The State of Vermont; MICHAEL MOEYKENS, Individually and as Acting Warden of the Vermont State Prison in Windsor, Vermont.

Defendants

D E P O S I T I O N

- of -

JULIUS B. MOEYKENS

taken on behalf of the Plaintiffs on Wednesday, June 13, 1973 at 10:00 a.m. at the office of Vermont Legal Aid in Montpelier, Vermont.

APPEARANCES:

Richard Kohn, Esquire, of Vermont Legal Aid, St. Johnsbury, Vermont, and Paul Berch, Esquire, of South Pomfret, Vermont, on behalf of the Plaintiffs;

Charles A. Bristow, Esquire, Assistant Attorney General and David E. Wilson, Esquire, Assistant Attorney General, in and for the State of Vermont on behalf of the Defendants.

S T I P U L A T I O N

It is hereby stipulated and agreed by and between the attorneys of record for the respective parties hereto, as follows:

1. THAT the testimony of JULIUS B. MOEYKENS may be taken and treated as if taken pursuant to notice and order to take depositions and that all formalities of notice and order are waived by the parties and the signatures to this stipulation are in like manner waived.

2. THAT all objections except as to matters of form are reserved until the deposition, or any part thereof, is offered in evidence.

3. THAT the deposition may be signed by the said JULIUS B. MOEYKENS before any Notary Public.

4. THAT all exhibits offered for identification are reserved by Counsel until the time of trial.

UNITED STATES DISTRICT COURT
DISTRICT OF VERMONT

THE LUPARAR: JOHN SHUTTLE, Editor of THE LUPARAR; CRAIG MURRAY, Individually and on behalf of all others similarly situated.
Plaintiffs

v.

R. KENT STONEMAN, Individually and as Commissioner of the Department of Corrections of the State of Vermont; MICHAEL MOEYKENS, Individually and as Acting Warden of the Vermont State Prison in Windsor, Vermont.
Defendants

Pursuant to the foregoing waiver of notice to take deposition upon oral examination for use in the trial of the above-entitled cause, I, Christine A. Bodette, Notary Public, on Wednesday, June 13, 1973 at 10:00 a.m., took the deposition of JULIUS B. MOEYKENS at the office of Vermont Legal Aid in Montpelier, Vermont.

The Plaintiffs were represented by Richard ~~Kohn~~, Esquire, of Vermont Legal Aid, St. Johnsbury, Vermont and Paul Berch, Esquire, of South Pomfret, Vermont; Defendants were represented by Charles A. Bristow, Esquire, Assistant Attorney General for the State of Vermont and David E. Wilson, Esquire, Assistant Attorney General for the State of Vermont.

COURT REPORTERS ASSOCIATES

By: s/Christine A. Bodette
Notary Public

(My commission expires Feb. 10, 1975)

JULIUS B. MOEYKENS, being duly sworn by the Notary to tell th whole truth and nothing but the truth, deposes and says as follows:

Examination by Richard Kohn, Esquire:

Q. Would you state your name please?

A. Julius B. Moeykens.

Q. Where do you reside?

A. 82 State Street, Windsor, Vermont.

Q. What is your present position?

A. Supervising Officer, or Warden, at the State correcti facility, Windsor.

Q. How long have you had that position?

A. Since April 29, 1973.

Q. During the events that took place with respect to issue number 12 of the Luparar in January, 1973, what was your position?

A. I was Acting Warden at that time.

Q. As Acting Warden, did you have general superintendence o the institution?

A. Yes.

Q. And with respect to the Luparar, what were your duties?

A. Well, what do you mean...

Q. Would your scope of authority at the time include any su pervision of the publication of the Luparar?

A. In a general broad sense, yes.

Q. Would you state your professional qualifications?

A. I have a Bachelor's degree in sociology and a Master's degree in guidance and counseling. I spent five and one half years employed as a probation and parole officer, and I have about five years and eight months, I guess, as Assistant Warden and now Warden at the prison. I had three years and seven months as a special agent in the Naval Intelligence.

Q. How long have you been at the Windsor prison?

A. Since September 11, 1967.

Q. At the time you came to Windsor, what was the first position you held there?

A. Assistant Warden.

Q. At the time you came to Windsor did the prisoners have a newspaper that they published?

A. Yes.

Q. Was that the Luparar?

A. No.

Q. What was the name of that?

A. It was entitled The Green Mountain Graphic.

Q. How long had that been in operation?

A. I don't know how long.

Q. Were there any guidelines established for publication of the Green Mountain paper?

A. I don't know.

Q. You never saw any?

A. I don't know.
Q. Was that a monthly publication?
A. Yes.
Q. And did you have anything to do with overseeing its publication?
A. No.
Q. Was it printed on prison facilities?
A. Yes.
Q. And if you know, did the money for printing it come from prison funds or inmate funds, or what was the financial arrangement?
A. I am not sure.
Q. Were there ever any difficulties concerning publication of any particular issues of that paper?
A. None that I know of.
Q. Could you tell us what happened to that publication?
A. It just ceased to be, because of a lack of interest the part of the residents.
Q. Now did it cease publication at the time you were there Assistant Warden?
A. Yes.
Q. And were any steps taken to form a new publication?
A. I only recall that there was some attempt made by on of the employees, Mr. Bogus, who more or less helped to put this monthly paper into operation... an attempt on h

part to generate some enthusiasm and interest in that field.

Q. You are referring to the Green Mountain paper, again?

A. I am.

Q. When did the Green Mountain paper stop publication, do you remember?

A. I don't remember.

Q. And do you know when the Luparar began publication?

A. I think it was around November of 1971... October or November, 1971.

Q. Were you involved in any negotiations with inmates in connection with the Luparar?

A. No.

Q. Do you know who was?

A. Well, Warden Robert G. Smith, Doctor Norman B. Hall, and I believe one of our former lieutenants, Kenneth Cooley, were, of our staff, involved.

Q. Mr. Cooley is no longer with the staff; is that right?

A. He is with our staff, but no longer entitled a Lieutenant.

Q. In November, 1971, were you consulted at any time concerning a prison newspaper?

A. No.

Q. And you had nothing to do with the original meetings that went on?

A. That's right.

Q. Do you know whether some sort of agreement or guidelines were promulgated as a result of those negotiations?

A. Yes, I know there were some guidelines that were agre upon at that time.

Q. Do you know how the paper was going to be funded?

A. Roughly -- there was a portion of money to be given every month by the facility. I think it was thirty or thirty-five dollars. Furthermore, it was agreed that th Vermont Institutional Industries would provide professio assistance of their printer and would give us cost for the paper, etc., to be used in all of this. I don't kno how much this represented, as far as Industries is concerned.

Q. As far as the thirty or thirty-five dollars contributed the facility, where did that come from?

A. This came out of part of our operating budget.

Q. To your knowledge, it didn't come out of the inmate fund

A. Oh, no.

Q. What is the inmate fund?

A. I don't know what you mean by 'inmate fund'. I don' think there is any such thing as an inmate fund. It is part of an operating budget.

Q. Is there any such thing in Windsor that is created from contributions from inmates, to your knowledge?

A. The other portion of the way the paper would be paid

for was the fact that the residents agreed they would solicit contributions from outside and they would attempt to sell... get contributions and sell their newspaper. This... they built up their own fund, which we entitled the Luparar fund.

Q. I see; do you have any knowledge as to the balance of that fund at any particular period?

A. No.

Q. Could you tell me what the Vermont Institutional Industries is?

A. It is another division of the Department of Corrections. They are charged with the responsibility of management and operation of certain industries at the facility; such as print shop, plate shop, farm, sawmill, etc.

Q. Was the Luparar printed in the prison print shop?

A. Yes.

Q. And has it been since its inception?

A. It was.

Q. Does Vermont Institutional Industries provide a full time printer for the prison?

A. Yes.

Q. And what is his name?

A. William Eddy.

Q. And what other things are the printing press used to imprint?

A. Would you explain that question?
Q. What are the things Mr. Eddy occupies himself with, in terms of printing?
A. Well, the print shop prints all your driver's licenses fishing licenses, State stationery, legal documents such a mittimi and all kinds of other court forms. This is how the time is occupied.
Q. Who bears the expense of that, in terms of printing materials and paper and...
A. That is all under Industries.
Q. Does Vermont Institutional Industries have a separate budget?
A. Yes.
Q. And they also supply the printer and pay his salary?
A. They have two employees in the print shop. Mr. Eddy is the printer, actually, in that... with the expertise in that field, and Mr. Francis Cantara is the other emplo
Q. Is he an assistant printer?
A. I don't know if that is the title you would give him. I know he runs offset printing and does a lot of that work up there. He oversees a lot of that work.
Q. And both Mr. Eddy's salary and Mr. Cantara's salary are paid by Vermont Institutional Industries?
A. That's right.
Q. Are any of the other costs of the print shop paid by the

prison's operating budget?
A. No.
Q. Can you think of anything else that the print shop prints that we haven't mentioned already?
A. No, I can't.
Q. Can you describe for me the procedure by which materials are purchased for the print shop?
A. I have no knowledge of that.
Q. Is this something that is handled independently by the print shop and Vermont Institiutional Industries?
A. There's a general foreman or general superintendent in charge of Industries, Mr. Allen Miller. He takes care of all this; we have nothing to do with those things.
Q. Where is Mr. Miller's office?
A. He has an office at the State correctional facility.
Q. So, Vermont Institutional Industries operates out of the State prison?
A. Yes, we furnish them with office space, and it has been a joint cooperation venture for years -- that the facility would provide a labor force for their Industries shop and they did. Other than that, they are totally independent of...
Q. Is Industries a private organization, or is it State connected?
A. State -- I said earlier, it is a division of the

Department of Corrections.

Q. Now do you know how much time the printer or his assistant devote to printing the Luparar?

A. No, I have no idea.

Q. Have you ever been in the shop while the Luparar has been printed?

A. I may have, but I wasn't aware.

Q. Do you know how many copies of the Luparar are printed for any particular issue?

A. I think they previously printed two hundred and fifty issues every month, with the exception of... I understand that the January issue was to be five hundred.

Q. Do you know the reason why they were going to expand the circulation or the number of copies in January?

A. No.

Q. I think you said the printer and his assistant are both full time employees?

A. Yes.

Q. What kind of press do you have at the prison?

A. I know we have an offset press... or offset, if that is the title for it -- I am not acquainted with those things. I know we have what they call a Heidelberg press We have typesetting capability to set a type, put it in these Heidelberg presses and run off automatically reams and reams of paper.

Q. Do you know which press is used to print the Luparar?
A. It was printed on the offset.
Q. Now, what is the department's philosophy insofar as you know it, concerning the inmates having their own newspaper and publishing it on the prison presses?
A. Well, I know from the beginning we encouraged them to have a newspaper in whatever form that they wanted, and to have free expression of many types of things. We thought it was a good thing -- it gave them something to do and gave them... made them... motivated them for some meaningful kind of things. I know from the beginning, in the fall of 1971, we encouraged this and we were glad they finally wanted to get something going again.
Q. Would it be fair to say that this contributed to rehabilitation of the men?
A. I think... you are asking for an opinion.
Q. Yes -- based on your experience as a correctional officer.
A. For the residents themselves I would say yes, that a venture like this certainly would be a good project that would help to rehabilitate some of the men. It wouldn't affect all of them, but it would affect the portion of them that would be involved in working on this paper.
Q. What about other men in the prison who read the paper; do you think that served a purpose?
A. I don't know... other than a personal interest in

reading it, I don't know if it would serve any other purpose.

Q. What was the function of the newspaper -- what was it supposed to serve?

A. I don't know, except to give them another media of communication.

Q. Was it your understanding that the articles that were submitted to the Luparar would be written by inmates?

A. My understanding was that the majority of them would be written by inmates, and they also expected that and welcomed any articles that might be written by staff at the facility or staff at correctional centers or people from outside. They were not... they printed anything that came in, including letters from the Lieutenant Governor at one time.

Q. Do you feel that the newspaper provided a means by which inmates could keep abreast of developments within the prison and also things on the outside?

A. Yes, I think it is safe to say that, yes.

Q. Was this a purpose to be served by an inmate newspaper?

A. It was to be an informational type of media. For example, they began sending a reporter to sit in on the Inmate Guidebook Committee, in order that whatever transpired there could be then printed and the information available -- so it was informational.

Q. Was it also the understanding that the Luparar would be sent outside the prison to interested people?

A. Yes.

Q. In sending it outside, does the prison have its own mail room?

A. Yes.

Q. And does that mail room have a mailman who is part of the postal system?

A. No, our mailman is a correction officer. He is employed by us.

Q. And when copies of the Luparar or any other mail are sent outside the prison, what is the procedure?

A. I don't know what you mean... what is the procedure...

Q. Is that matter delivered to the mailman, stamped and addressed and then does the mailman send it out into postal routes?

A. He packages up, puts everything together and brings it down to the local Windsor post office. From there they distribute it.

Q. Does the prison have any arrangement with the United States Postal Service for mailing of packages or letters?

A. No, I don't think so.

Q. To your knowledge, when a letter is delivered to the mailman in the prison, is it considered to be in the Postal Service o[illegible]t?

A. No.
Q. So it is not until the letter goes to the post office?
A. That's right.
Q. Is there any way in which an inmate can send a letter legally outside the prison to the post office?
A. Not legally, no.
Q. Were there any guidelines established in 1971 or thereafter for the types of things that could go into the newsletter?
A. Yes there was.
Q. And what were those guidelines?
A. I can't remember them all.
Q. Have you seen the... I show you what has been marked as Deposition Exhibit No.2 for identification and ask if you have seen that?
A. Yes.
Q. Could you identify it?
A. It looks like the summary of the guidelines that were put together in October or early November, 1971, when eight inmates met with Warden Smith and... oh, a couple of others... Doctor Hall, K. Cooley, Lieutenant Paul Silver, a corrections officer, Mr. Crandall...
Q. To your knowledge are these the guidelines that are still in effect at the prison for dealing with publications by the inmates?

A. These are the guidelines that are still in effect.
Q. And do you know whether the inmates... do you know how the inmates who sat on that committee were selected?
A. I don't know.
Q. Is there any statement in the guidelines that indicate they were an ad hoc group who might change with the passage of time?
A. Yes, it says here 'These people of the inmate population who meet to set up the policies are not necessarily those who will be working on the publication'.
Q. Do you know how the members of the prison staff were selected?
A. I don't know, because I didn't have anything to do with it.
Q. Okay, I direct your attention to the paragraph beginning "Policies and Guidelines". Do you see a statement there that refers to how the Luparar will be funded, in the beginning?
A. It states "For the cost of the initial publication and those immediately following, the cost will be approximately thirty dollars. Some months this will be less".
Q. Where was that to come from?
A. That was the... I don't know where that money was... "Until such time as we receive contributions by the public, this money will have to come from the inmates' fund".

That is a misnomer -- this was written by one of these residents that put it together. They banter around 'inmates' funds with commissary accounts, which are...

Q. Are you certain that Exhibit 2 was prepared by the residents and not by the staff?

A. I am not sure, except that I know Warden Smith's usua way was for somebody to make notes and then type it up an send it to me. I am not sure who wrote it; there is no signature.

Q. But Warden Smith would know, do you think?

A. Probably.

Q. But it is your belief that when that refers to the inmate fund, that was not the true state of events?

A. That would be the operational budget. It is a misnor to say "inmates' fund". There is no specific inmates' fund. It is just part of the operational budget.

Q. When we refer to the operational budget now, I take it we are referring to State money?

A. Yes.

Q. Does any inmate contribution go into that under any heading?

A. No, they have a totally separate account, which we still have for the Luparar.

Q. What do the guidelines say about freedom of expression?

A. "Freedom of Expression... All articles submitted are

subject to approval by the editorial staff".

Q. Do you know whether the editorial staff was to consist of residents or staff members or mixed?

A. Mixed, I guess; I don't know.

Q. Do you know whether under the present... at the present time who approves the issues of the Luparar or the articles?

A. Well, it was always normally Doctor Norman Hall. He was the only one left on our staff who still worked with the resident Luparar staff, so he is the one who used to read and approve or express nonapproval of these articles.

Q. Do you know whether he still has that function?

A. We haven't had any occasion to test this for six months now.

Q. Up until January, 1973, when number 12 came out, was this his job?

A. Yes.

Q. Did anyone ever share that responsibility?

A. I think Mr. Orlando Tusler, our supervisor of education, was asked to fill in in the event Doctor Hall was absent.

Q. What was Doctor Hall's position in the prison?

A. He was librarian.

Q. As far as you know, Mr. Tusler's sole function was to fill in when Mr. Hall was unavailable?

A. Apparently this is what it turned out to be. When

Doctor Hall wasn't available they turned to Mr. Tusler to look this over and give his approval or what.

Q. Did Mr. Tusler or Mr. Hall have complete authority to approve an edition of the Luparar or not?

A. It was a funny situation. They didn't have authority to approve it, because all they ended up doing was looking at an article and saying "we object to these articles". They were told " We don't care if you object or not. We are still printing it".

Q. If either of them approved an issue, would that be the final decision as to whether the issue could be published?

A. In November Doctor Hall wrote me a statement that he disapproved certain articles in that issue...

Q. Is that referring to issue number 12?

A. No.

Q. Which issue was that?

A. The November issue. He stated he had attempted to inform the editor of his disapproval, and the editor told him it didn't matter whether he approved or didn't approve He was going to print it anyway.

Q. Is this all contained in the letter he sent to you?

A. Yes.

Q. Do you still have that letter in your possession?

A. No.

Q. Would there be a copy of that letter from Doctor Hall?

A. I suppose there would be.
Q. Would you be agreeable to supply that letter to me without an Order to Produce?
A. Yes.
Q. What was the outcome of that dispute?
A. I simply told him " We have not been successful as of late in getting any articles that we object to removed, so we might as well forget about it and let them print it".
Q. Had there been prior instances where Mr. Hall and Mr. Tusler complained, but you let it go through?
A. I don't recall specific ones. This one I do, because it was documented. Paul Silver, for example, came to me. He had been serving on this committee from the beginning and said "I don't want any more part of it, because I object to certain articles. They tell me I can't object, and if there is no... they are not going to listen to me any more, so I said 'I don't want any more part of it'", and it was reaching the point to where Doctor Hall said "I don't want any part of it either".
Q. Referring to the November issue, did you personally see the articles Doctor Hall objected to?
A. I must have, but I don't recall what it was now.
Q. You don't know whether the objection was because they attacked personalities, for example?
A. I don't remember what it was.

Q. Did you send a letter back to Doctor Hall concerning the November issue?

A. No.

Q. And there is no further correspondence concerning that issue?

A. No.

Q. Is there any correspondence, to your knowledge, concerning a publication of any issue up to issue number 12 and what might appear in them?

A. No.

Q. At any time did the prison set up any procedure to take care of the situation where someone objected to a particular article and how that would be handled?

A. No one had ever objected to any particular article, except our own staff. Therefore, I told them "Look, we who work in public facilities must be ready to read all kinds of things about ourselves", and so I sort of consol them into letting things go. So, no procedures had been set up.

Q. Was it your understanding that at any time the prison could step in and say "We are not going to let this issue go out" or "We are not going to let this article be published" without any hearing-type procedure?

A. This question had never risen, so...

Q. When you had told the... when you referred to your staff

members who had objected before and you had consoled them, are you referring to guards, or...

A. Treatment staff and... yes, both.

Q. When you said that you, as employees of such an institution, have to be prepared for certain types of attacks or articles, what were you referring to -- were you referring to personal attacks?

A. Yes.

Q. And did you have these conversations with staff members in connection with the November issue, or what was this... a continuing thing, or...

A. I don't remember when, except to say that beginning the August, 1972 issue... the paper wasn't printed until we finally got it going again when I became Acting Warden in September. Finally, in October, I started talking to some other people. I said "Can we get this printed again", so they finally did. Then in November, December... those two issues contained articles that I just personally objected to. Of course, a lot of them made reference to me and the way I was, etc., but once again, there was no issue until January that if a person employed at the facility were attacked or made the butt of a joke that I couldn't point at another article in the same issue and say "Look, this doesn't seem too bad. Look at what they said about me."

Q. What you are saying is that issue number 12 was no worse than things that have been said before?

A. I am not saying that. It was becoming gradually worse and those attacks on personalities. It culminated on this issue 12, which went really outside of the prison just outside of our facility.

Q. As far as any attack made on you in issue 12, did they bother you personally or was that just part of the game?

A. I guess I had become a little accustomed to that by then.

Q. So anything said in there about you didn't particularly..

A. I can't say that I enjoyed it, but I learned to tolerate those things.

Q. Was it the attacks on people outside the institution that concerned you the most?

A. Yes.

Q. Referring to Exhibit No. 2, was there anything set out in the original guidelines which differentiated issues and personalities?

A. Yes, a statement that said "Editorials will attack issues and not personalities".

Q. Those guidelines referred to both articles and editorials, didn't they?

A. Yes.

Q. Is there a difference between articles and editorials?

A. I don't really... I don't personally consider it a difference. I suppose in the large newspapers it is.

Q. Aren't editorials usually unsigned articles that set forth the views of the editor of the paper -- isn't that a layman's definition of an editorial?

A. I guess so.

Q. And an article... wouldn't that generally be a signed article?

A. Yes.

Q. Is it possible in your mind that a distinction was being made between articles and editorials?

A. I don't think so.

Q. On what do you base that?

A. Because there was nothing that appeared in the paper that wasn't signed.

Q. November 3, 1971, when these guidelines were set up... wasn't that before the Luparar commenced publication?

A. Yes.

Q. So at that time there was no issue of the Luparar that you could look at to make that judgment?

A. That's right.

Q. Isn't it possible that these people who made and set up these guidelines were concerned about unsigned editorials and what they might say, rather than articles?

A. I don't know.

Q. It is possible, though?

A. I suppose.

Q. Was there any other further restrictions set out in those guidelines for publication of the articles?

A. One note to everyone writing articles for publication "Please remember that inflammatory articles will not be published".

Q. In a prison context, what would "inflammatory" mean to yo

A. Anything that would attack a person in such a manner to maybe cast doubt upon his intregity.

Q. Doesn't "inflammatory" suggest more, inciting a disturban or something like that?

A. I don't think so.

Q. Would you say that in the prison context an inflammatory article would be one that related to the security of the institution?

A. It could.

Q. But not necessarily?

A. Not necessarily.

Q. Doesn't the word "inflammatory" usually mean to incite someone to commit an immediate act and a violent act?

A. Yes, that is usually the meaning.

Q. Isn't this the common meaning of "inflammatory"?

A. Yes.

Q. I show you what I have had marked as Deposition Exhibit

No. 1 and ask you if you have ever seen that?

A. Yes.

Q. Could you identify it, please?

A. It is a statement that was typed up that a copy was given to each one of the then members of the Luparar staff. It was given to them by myself on January 5, 1973.

Q. So this was some guidelines that were given to members of the staff of the Luparar?

A. This was summarizing what had been agreed upon November, 1971. This was worked out by the staff and inmate representatives at Windsor.

Q. This was typed up and given to the staff members as a result of issue 12?

A. Yes.

Q. Was that given before or after issue 12 was at press, so to speak, or was it about the same time?

A. It was simultaneously. The issues had already hit the street, so to speak, at the time this meeting was held on Friday evening, January 5.

Q. Who wrote that summary?

A. This was dictated by Commissioner Kent Stoneman.

Q. Now what does that summary have to say about the difference between issues and personalities?

A. "Issues to be attacked, and not personalities".

Q. And there was no longer any reference to editorials, was there?

A. There is not.

Q. Would you agree that there is a difference between the statement contained in that summary and the statement contained in Exhibit No.2, which were the original guidelines

A. Yes... "Editorials will attack issues and not personalities", and the other is "Issues to be attacked and not personalities".

Q. So "Editorials" had been deleted in Mr. Stoneman's summary

A. Yes.

Q. Do you wish to examine that further?

A. I was just looking at it.

Q. Does Mr. Stoneman's summary refer to uncomplimentary articles?

A. Yes,"Uncomplimentary articles not to be published".

Q. Would you examine the original guidelines set forth in Exhibit No. 2 and tell me where, if anywhere, uncomplimentary articles are referred to?

A. I don't see any reference in this document.

Q. On Commissioner Stoneman's summary was added an additional restriction, wasn't there?

A. Yes, but there is another document that was summarized as a result of further meetings, too, in addition to this one here. Before this document was issued, the Commission called me and wanted to know what kinds of things I had in my files that had been agreed upon previously. This was

one of the things I read him, and included another one that had been written at a later date by then editor, James Clothey, in which he made reference to uncomplimentary articles would not be published.

Q. That was a letter written by Mr. Clothey?

A. No, it was re-emphasizing, repeating or re-evaluating the original policies and guidelines when James Clothey became editor of the Luparar. He then replaced James Labor, who had previously been editor. James was transferred, James Clothey became editor and he re-emphasized his policy and guidelines. That is the one you don't have, apparently.

Q. Do you have a copy of the letter in your files?

A. Yes.

Q. Will you agree to supply us with a copy of that letter without Motion to Produce?

A. Yes.

Q. Was there any other kind of correspondence between you and Commissioner Stoneman concerning publication of any issue of the Luparar?

A. No, not until this one.

Q. Mr. Stoneman's summary doesn't say anything about inflammatory articles, does it?

A. No.

Q. Were there any members of the prison staff on the editorial

board of the Luparar, or was it totally inmate run?

A. Pretty much totally inmate run. As I previously stated, Doctor Norman Hall was utilized as an editorial staff member only for the purpose of reading the rough draft of the prepared paper to express his objections to articles.

Q. And then his objections were referred to you, as Assistant Warden; is that right?

A. He usually expressed his objections to the editor. For the two or three issues prior to this one he expressed them to the editor, gained no satisfaction, and related this information to me. I had conversed with the central office prior to this about some of the articles that had been beginning to appear which I considered were attacking personalities and certainly uncomplimentary, and I had been told 'well, you got to have big shoulders and you have to have tough skin when you are a public figure'.

Q. When you refer to the "central office", I assume you mean Commissioner Stoneman's office.

A. Yes.

Q. Was it Commissioner Stoneman who told you you had to have big shoulders?

A. Yes, he and the deputy commissioner. In fact, my attorneys even told me that.

Q. Who was the deputy commissioner at that time?

A. Mr. Hogan.
Q. Did any of these issues prior to No. 12 ever attack personalities outside the institution?
A. One, that I remember.
Q. Do you remember who it attacked?
A. Yes.
Q. Who was that?
A. Speaker of the House, Walter Kennedy.
Q. I would like you to make a judgment here -- was it of equal intensity as the type that occurred in issue No. 12, in your view?
A. I think it was uncomplimentary, but I don't think it was as intense.
Q. Does the department have copies of the October, November and December issues of the Luparar?
A. I don't know if they retained them in the file somewhere... I don't know.
Q. Would you be willing to search your files and if you have a copy of those three issues make them available to us?
A. I don't have any in my own files, I know that.
Q. Would there be any other file in the Windsor prison of which you are the warden, that would contain copies, to your knowledge?
A. Not that I know of.
Q. Does the library keep a copy?

A. I think so.
Q. Does the commissioner's office keep copies?
A. I don't know.
Q. As warden, are you concerned about what goes into the Luparar?
A. Sure.
Q. Wouldn't it be normal practice to keep copies of the publication if something may arise?
A. I may have personally... at home I may have copies, but I don't have any in the prison that I know of.
Q. If you can locate issues for October, November and December, would you make those available to us?
A. If I could have them back.
Q. Certainly.
A. Yes.
Q. Would you describe how the problems associated with issue No. 12 first came to your attention?
A. I don't recall who first brought it to my attention the morning of January 5th. It was either my day shift supervisor, Mr. Mayo or Mr. Silver. In any event, they brought an issue over to me and they said "Take a look at this". I glanced at a couple of articles. The first one inside of the cover, regarding Mr. Leahy, struck me, and I glanced at a couple others. I thought "This is getting a little bit out of hand". So, I then telephoned the

commissioner and told him about a couple of these articles and I read the first one to him. He asked that a copy be brought up to him immediately, which was done. At this time I had already been informed that the visitors had taken out several copies and construction workers had their copies. They were all over the institution and had already left.

Q. I take it when it was presented to you, it was a bound copy of issue 12?

A. Yes.

Q. In your judgment was the article concerning Mr. Leahy more severe than that which had attacked Mr. Kennedy in the previous issue?

A. I guess it is a matter of morals. In my mind I think it was, yes.

Q. You sent a copy to the commissioner's office?

A. Yes.

Q. Was that by messenger?

A. Yes.

Q. Did all this take place January 5?

A. Yes.

Q. Subsequently did you receive word from the commissioner's office?

A. Yes.

Q. What was that word?

A. That I was to... this was late in the day, about four o'clock or afterwards. He said "I want you to convene all the Luparar staff this evening and I want you to give them this statement", which he said "you should give to them as if it were from you", meaning me. He dictated it over the telephone to the secretary, who had it typed up. He also stated that I was to pick up any more issues of this No. 12 January issue of the Luparar that might be in the facility and to store them in an area and not let any more of these issues go outside the institution.

Q. Did he give you any guidelines about distribution within the institution?

A. We were to pick up any and all issues that we found in the institution.

Q. And did you do that?

A. Well, when I met with the men that night I pointed out to them that I really hadn't had an opportunity to look over the whole issue... that I had quickly, in scanning it found a couple of articles that I really felt wouldn't meet the guidelines -- that we would meet again on Monday afternoon, after which time I would have had an opportunity to really look it over and let them know what I was objecting to. I told them "Look fellas, right now don't plan on mailing any more out or letting any more go out to visitors over the week-end, because we just won't let them out."

I had directed our shift supervisors on duty that weekend as of this moment this issue was not to go outside the institution by visitors.

Q. When the commissioners office called you back on the 5th concerning what you just testified to, did you speak to the commissioner directly?

A. Yes I did.

Q. That was Mr. Stoneman at the time?

A. Yes.

Q. Did you feel that the distribution of issue 12 within the prison presented any serious problems for you in terms of administration of the prison?

A. By this time I knew every resident had a copy of it.

Q. Did you take specific steps to get those copies back?

A. Not at that moment. When we met on Monday... I don't recall if there were thirteen, fourteen or fifteen articles I referred to. I said "All right, we are going to have to pick them all up". I was trying to do it in such a manner so that it would be less disturbing to everybody. I said "Any copies you now have ready for mailing out, just turn them over to me and we will store them for you. They won't be destroyed until the whole matter is resolved", because a lot of this had been addressed and stamped.

Q. They were all set to go?

A. All set to go, and I said "If this issue goes out in

part or whatever, you have still got the address and stamp, so we won't destroy that". Then I said "If you know of any others, go and have them turn them in. We will give you a day or two to do this before we start picking them up".

Q. And were many issues of the Luparar returned?

A. Thirty-seven out of five hundred.

Q. What steps did you take to retrieve the others?

A. We looked.

Q. And you couldn't find them?

A. No.

Q. Did you conduct a cell by cell search?

A. Yes we did.

Q. Did you instruct the officer in the mail room not to mail any editions out?

A. Yes.

Q. Is this something that Mr. Stoneman had specifically instructed you to do?

A. No.

Q. This was on your own authority?

A. Yes.

Q. After the distribution of this particular issue in the prison, were there any disturbances or any incidents?

A. After the printing, you said?

Q. After the distribution to the men in the prison?

A. No, I don't recall any.

Q. Were there any incidents of insubordination that were related to this issue?

A. No, except they didn't do their part in turning the things in. They certainly were not obedient. The only way I got thirty five is because they were brought down to the meeting that night and I got a hold of them then. Those were the only ones turned in to me.

Q. Correct me if I am wrong, but I understand you had a meeting on January 5th after you spoke with Mr. Stoneman?

A. Right.

Q. Who was at that meeting, if you recall?

A. Mr. Jordan Mayo sat with me; Richard Cronin; Louis Bowers; William Mayer; Gerald Williams; Ludger Benoit; John Shuttle... I don't recall any others. That is pretty close.

Q. And were there objections to not sending the Luparar out at that point?

A. On Friday evening it was presented in such a way... I told them I had to look it over. There was no firm decision made at that point... just saying we are going to hold up further distribution.

Q. When you say there was "no firm decision", hadn't Commissioner Stoneman already made the decision the issues would not be sent out?

A. Not in its entirety. We, based upon what we had at the moment, knew that in its present form it couldn't be sent out. I had not read it over completely, and I told them so. I also said at that time that we would meet agai Monday afternoon, after which time I would have read it completely.

Q. On the basis of what you had seen as of January 5th, were you convinced in your own mind the issue as presently constituted could not be sent out?

A. In the form I saw it... could not be, right.

Q. So the purpose of your reading it over the second time would be to determine which other articles were offensive?

A. Right.

Q. How was it left with Commissioner Stoneman; were you going to get back to him?

A. We had agreed that we would converse again on this mat ter on Monday, which I did Monday morning.

Q. I show you what I have marked as Deposition Exhibit No. 4 and ask you to identify it?

A. That is the January issue of the Luparar.

Q. And is that the issue that you saw on January 5th?

A. Yes, only mine had a yellow cover, like that one.

Q. Would you identify the articles which you had seen at that point which was the basis of your call to Commissioner Stoneman?

A. Article number one entitled "Chittenden County Prima Donna".

Q. That concerns Mr. Leahy?

A. Yes.

Q. Were there any other articles?

A. Yes, there was one entitled "Dingy (pronounced ding ee) Deane Davis", or something of that nature.

Q. Page 31?

A. Yes, "Governor Deane 'Dingy' (pronounced ding ee) Davis".

Q. Wouldn't the proper reading of that be "Dingy" (pronounced din jee)?

A. I don't know.

Q. Would the proper reading of that be "Dingy" (pronounced din jee)?

A. I supppose.

Q. Please continue.

A. There is an article on Paul Hudson...

Q. Which page is Paul Hudson?

A. 38.

Q. What was the basis for your objection to these three articles?

A. I thought the one about Mr. Leahy implied that maybe he was a homosexual, and that was my basis for objecting. The one on Paul Hudson implied... questioned his integrity and honesty, and the one about Governor Davis I just thought

was totally uncalled for and uncomplimentary.

Q. So you were applying the uncomplimentary guideline to that

A. Yes.

Q. With respect to the Leahy article...

A. And it also attacked personalities, not issues.

Q. I would like to isolate the reasons why you felt these articles should not go out. In your view that attacked personalities?

A. Yes.

Q. Would you clarify for me whether there were other reasons?

A. No, it attacked personalities and was totally uncomplimentary, and whether true or untrue I just didn't feel that we, the facility who helped contribute financially to this paper, were going to be a party to that kind of uncomplimentary article.

Q. But you agreed to the articles that had appeared in previous issues of the Luparar and had gone out?

A. And I also have a threat of a lawsuit on that one, by the one who the article was written about.

Q. When you say "threat of a lawsuit" I assume none has been filed?

A. It hasn't.

Q. Since November?

A. I am sure he didn't want his name brought into it, that's why.

Q. Brought into what?

A. Brought into the whole thing.

Q. Is this Mr. Kennedy?

A. Right.

Q. I am a little puzzled by your testimony...

A. He wrote a letter to the editor following the appearance of that particular article in that issue.

Q. The November issue?

A. Yes, or whenever it was.

Q. Did he threaten a lawsuit in that letter?

A. He stated if it were not for the fact this man were already an inmate of the prison and he was doing all he could to assist the inmates of the prison he would put this in the hands of his attorney to bring suit.

Q. Has the prison, to your knowledge, received any official word about any official lawsuit being brought on the basis of that article?

A. No.

Q. Referring to the article about Mr. Leahy, wasn't the author of that article using a literary device to suggest Mr. Leahy had allowed a rapist to go free in exchange for his testimony, and thereby implying he must have had a preference for little boys instead of little girls?

A. I don't know.

Q. Wasn't that the sense of the article?

A. I just... I don't know what the author intended.
Q. What, specifically, in the article did you object to?
A. The whole article just was not in keeping with the guidelines, as far as I was concerned. It just attacks personalities and not issues.
Q. Is there an issue that is being presented in that letter?
A. There may be an issue.
Q. What do you see the issue as?
A. I don't know.
Q. Isn't it possible that the issue is that, according to the writer, Mr. Leahy is not fulfilling his public trust because he made a deal with a rapist in exchange for testimony -- isn't that an issue?
A. I don't know what the writer has in mind, Mr. Kohn.
Q. Isn't the issue 'Under what conditions immunity should be granted'? I direct your attention to the second from last paragraph.
A. Yes, that is written.
Q. Doesn't the writer approach immunity?
A. Yes.
Q. Isn't that an issue?
A. I guess it is.
Q. Referring you to page 31, the article containing "Deane Dingy (pronounced din jee)..."
A. Dingy (pronounced ding ee), the way it is written.

Q. If I ask you to read that article now, doesn't he refer to Mr. Deane's (sic) appearance -- his haircut, his clothing?

A. Yes.

Q. Isn't it reasonable that Dingy (pronounced din jee) refers to his appearance?

A. I don't know.

Q. Could you tell me specifically in that article what you object to?

A. No I can't tell you specifically. I just object to the entire tone of it.

Q. Did you object to the reference to "poor niggers in Africa"?

A. I don't even remember what the whole article was about.

Q. Would you read it now?

A. That refers to his honesty here -- this is attacking his integrity.

Q. Does it refer to his collecting money from friends and relatives around the State before leaving office -- putting relatives in office before he leaves office?

A. Yes.

Q. Aren't those issues?

A. If that is your opinion, Mr. Kohn -- it isn't mine.

Q. You don't see any issue in that article?

A. I don't think issues have to be attacked in that manner.

Q. Is it the manner of bringing the issues forward that you

are concerned about?

A. I guess that is probably what I am concerned about.

Q. So you don't deny that there are issues contained in these articles, then?

A. I suppose there are issues, but I object to the attack to his personality.

Q. And on page 38, the article about Mr. Hudson...

A. It also attacks his personality and integrity.

Q. And does it also contain issues?

A. Yes it does.

Q. In your view is it possible to write an article concerning the issue of whether the State's Attorney has covered up the involvement of prison personnel in an escape without involving his personality... how he abuses his office?

A. I guess it would be kind of difficult.

Q. For many of these issues, isn't it a fact that in order to deal with the issues you also have to deal with the man?

A. I suppose.

Q. Those are the three articles you based your initial conversation with Mr. Stoneman on?

A. To the best of my recollection, yes.

Q. Do you know at that time whether any of the figures who were mentioned in any of those three articles were contacted or had made contact with you or Mr. Stoneman or anyone else?

A. I don't know.

Q. Has anyone, to your knowledge, from the prison ever called Mr. Leahy, Mr. Hudson or Governor Davis in connection with any of these articles?

A. I don't know.

Q. I believe it was your testimony that over that week-end you read the entire issue of the Luparar?

A. Yes.

Q. I would ask you to go into that issue now and point out the articles you thought were offensive -- all of them -- and I will hand you a pen for the purpose of marking that copy?

A. There is only one other issue in the entire paper that I objected to, and that is the article on Michael Donahue, page 7.

Q. And would you point out to me what your objection was in that article?

A. The same basis of my objections before. They were attacking the personality of this man, not really the issues. I don't even know what the issue was.

Q. Did the article complain about the fact that the prison was one hundred sixty-three years old and the taxpayer of Vermont was getting a good return on his investment?

A. According to this article, they were dissatisfied with Mr. Donahue's reporting about the prison, its costs and

everything else concerned.

Q. Was it the attack on Mr. Donahue you were concerned about?

A. Yes.

Q. Did you or anyone from the prison ever contact Mr. Donahue about this article?

A. No.

Q. Is there anything else in the article you objected to other than the fact it attacked Mr. Donahue?

A. That is all -- it attacked Mr. Donahue.

Q. When you met with the inmates the following Monday, which would have been the eighth...

A. Yes.

Q. Did you meet with the same inmates?

A. I think... yes, I think they were all the same ones.

Q. Did you tell them the four articles you have referred to this morning were the ones you were concerned about?

A. No, I went through the entire book. All others that were objected to on the eighth that I informed them... I have told you the four I objected to personally. All others objected to were objected to by the Commissioner.

Q. Had you had further conversation with the Commissioner between Friday night and Monday when you met with these inmates?

A. Monday morning I conversed with him.

Q. Could you tell us the substance of that conversation?

A. It was just very simply that the Commissioner told me that he wanted me to strike out any article in this newspaper that referred to any personality, whether he was employed in or out of the prison, period.

Q. Did he give you a specific list of articles to me marked?

A. No he didn't, except he told me any article that refers to any of our employees in an uncomplimentary manner was to be struck out.

Q. Mr. Stoneman had a copy of the Luparar at that point?

A. Yes.

Q. How long did that telephone conversation last?

A. I don't know.

Q. Was it initiated by you?

A. ... including the photographs.

Q. Are you referring to the cartoons in the Luparar?

A. Yes, the cartoons.

Q. Were any of those cartoons discussed on the telephone?

A. Yes, he told me this one particularly...

Q. Which one are you referring to?

A. Page 34.

Q. This is...

A. He said "That isn't in good taste" or something to that effect. He didn't want it in there.

Q. Was that the only article or cartoon that he referred to, to your recollection?

A. To my recollection, yes.
Q. Did you discuss that particular cartoon on page 34 with him?
A. No.
Q. Did you agree with him it was in poor taste?
A. Yes.
Q. What does that cartoon depict?
A. It depicts former Captain Michael Toomey who in earl December was arrested for DWI.
Q. What was Captain Toomey's position at the prison at that time?
A. He was then entitled Chief Security Officer.
Q. What were his duties at the prison?
A. Directly attached to the warden -- not in the operational end -- concerned with fiscal, personnel and procedural security.
Q. Was he the captain of the officers down there?
A. Not then, formerly.
Q. Formerly he had been the captain of the officers?
A. Yes.
Q. When were his duties changed?
A. Last August, 1972, he became director of correctiona counselors, and this was the time when all titles were changed. Lieutenants and sergeants were no longer.
Q. I would like to have this in my own mind... let's use th

date of his DWI conviction for reference. When was that?

A. Early December.

Q. 1972?

A. 1972.

Q. Prior to that conviction what was his status?

A. Chief Security Officer.

Q. So at that point he was not Captain of the Guard, so to speak?

A. That's right.

Q. How long before that had he changed assignment, as you recall?

A. It was the later part of September or early October, 1972.

Q. Was there a reason for the change?

A. I can't answer that; I didn't have anything to do with it.

Q. Was he replaced by someone else?

A. No, he wasn't replaced by anybody.

Q. Was the job just terminated?

A. Yes.

Q. So who was the senior officer in the prison who would have direct control over the custodial staff -- and I am referring to the time when Captain Toomey was changed from Captain to Chief Custodial Officer whatever that title was?

A. When he changed to Director of Correctional Counselors

he was still in charge.

Q. In charge of the uniformed officers still?

A. Yes. His command duties ceased the end of September o
early October when he became Chief Security Officer.

Q. We have heard a lot of that 'Chief Security Officer' on the television lately, but I would like to know what his duties were in that role?

A. I just told you.

Q. More specifically -- he worked directly with the warden and was in charge of security within the institution, but can you tell me exactly what he did?

Mr. Bristow: I am going to object to this. I don't see the relevancy of all this. We will be here forever if you have to go into titles and job descriptions and what is depicted in the cartoons. Do you want to get into the duties of the Governor, also? I don't think it is relevan and I think any kind of questions in that line are off.

Mr. Kohn: The objection is noted.

Q. Did Captain Toomey have any direct contact with any of the inmates at that point?

A. Yes.

Q. What was the nature of his contact with the inmates?

A. He was touring within the institution daily, and part of this touring... he would converse with them, I am sure.

Q. Is Captain Toomey still at the institution?

A. Yes.
Q. What is his present job?
A. Chief Security Officer.
Q. That is his present job?
A. That is his title.
Q. You say Captain Toomey was convicted of DWI?
A. I didn't say that. I said he was arrested.
Q. Do you remember... was there ever a conviction?
Mr. Bristow: Objection. It is irrelevant.
Q. Would you answer the question please?
A. I don't know.
Q. To your knowledge, had Captain Toomey ever had any prior scrapes with the law concerning the law?
Mr. Bristow: Objection. I am going to object to this entire line. Without pursuing each question, I object to any kind of questions in connection with Captain Toomey insofar as any relationship with the law enforcement he may have had.
A. I don't know.
Q. In your personal view and based on your observations, did Captain Toomey have any problem with alcohol?
Mr. Bristow: Same objection.
A. I don't know.
Q. Isn't it a well know fact that Captain Toomey drinks to excess?
A. This I don't know.

Mr. Bristow: I am going to instruct the witness to discontinu answering that line of questioning if it persists. It is not proper questioning.

Mr. Kohn: The objections have been noted.

Q. Assuming that the Captain of the Guards or Chief Security Officer in the prison is an alcoholic, do you think the prisoners have an interest in that fact?

A. Knowing the residents, they have an interest in anyon that is working at the facility. In fact, they have a complete dossier on anybody that works there. They know all the strengths and weaknesses.

Q. Is it of legitimate concern to them if their custodial officer is having a problem such as alcoholism, in your view?

A. I don't think it is any of their concern.

Q. You don't think it is any of their concern?

A. No.

Q. Would it be fair to say that the custodial officers at a prison have a great deal of control over the men who are imprisoned there?

A. I don't think that man's private life away from his job has any effect or concerns any of the residents withi the prison.

Q. The objection to the cartoon depicted on page 34 was that it was in bad taste, I take it?

A. Yes.

Q. And assuming that the Chief of Security did have a problem with alcohol, you would still find this objectionable?

A. It is an attack on his personality.

Q. And you don't see an issue underlying the question of whether the Chief Security Officer drinks -- that is of no legitimate concern to the inmates?

A. I don't think that whatever a man's personal habits are away from his job, so long as those habits do not in any way influence his performance on the job, should be of any concern to them.

Q. I see, would you examine the edition of the Luparar you have before you and mark those articles which, acting on Commissioner Stoneman's instructions, you told the staff on Monday afternoon or evening were not acceptable. I will hand you a pen, and since there are X's on some of those papers already, I will ask you to use an O figure at the top of the page or a check.

A. Starting from page 2... page 3; page 4; page 7; page 8, part of it...

Mr. Berch: Referring to the top part of Page 8?

A. Yes, a continuing article. I wish I had my own -- I can't remember.

Q. You don't have your own with you?

A. No; I am going to give you the ones I remember. Page 12

"As rumors go", page 22...

Q. Which?

A. It is part of an article entitled "The Destruction of Windsor". Then the article on page 22 begins to make reference to some of our employees. On page 23 the same article continues... so that article. Page 31, Governor; page 33, down in that article entitled "Habitual of the Parole Board", and further on down refers to Reverend William Young; page 34, cartoons; page 38, Paul Hudson... I guess that is it.

Q. These are the best of your recollection, I understand?

A. The best of my recollection, right.

Q. Do you have the original copy in your files that was marked?

A. Yes.

Q. Could you make that available to us so that we could check it against the ones you have marked today?

A. Right.

Q. Now, we have been over page 2. Page 3 was objectionable.. that makes reference to Mr. Tusler, I take it?

A. Yes.

Q. What is your specific objection to that article?

A. Again, personalities.

Q. I think it was your testimony you didn't personally object to these articles; right?

A. Right; I gave you the four I personally objected to.
Q. And the ones you have marked are the ones you felt involved issues of personality, and you were following instructions.
A. The instructions were to delete any article that refers to personalities and are uncomplimentary to any of our staff.
Q. Had you spoken to any of the men who are mentioned in these articles concerning the use of their name?
A. I hadn't had time to, at that point. The only one was Mr. Tusler. Somehow, Mr. Tusler became involved with this January issue, as far as approving or disapproving, in Doctor Hall's absence. He telephoned me prior to it even hitting the streets and objected to it. He said it contained a lot of articles that were attacking personalities, and so on.
Q. To your knowledge, Mr. Tusler never approved this article for publication?
A. To my knowledge... this one on page 3 he didn't mention -- the one about himself -- he mentioned the ones about others.
Q. It was Mr. Tusler's job, in the absence of Doctor Hall, to approve or disapprove the issues for printing?
A. Right.
Q. Had he ever approved the whole issue, to your knowledge?
A. No he hadn't.
Q. He called you on the telephone to complain of certain articles?

A. He said he couldn't approve it, but they don't go along with it.

Q. And that was when you got ahold of Mr. Stoneman?

A. Not at that point, because I didn't know what he was referring to. I didn't get ahold of Mr. Stoneman until I actually had a copy in hand.

Q. Mr. Tusler contacted you on the 5th or the day before?

A. I don't think it was the 5th. I think it was a couple days before -- when it was getting ready to go to print, anyway.

Q. At the second meeting on Monday with the staff when you presented them with the objectionable articles, did the department make them an offer in terms of publication of the issues and... what was the offer?

A. Two offers, I guess. "If you are willing to remove the objectionable pages, then it will make a smaller issue but then it can be distributed". That was the first offer. The other offer was that I would be willing to sit down with the group again and to discuss evaluating the present policies and guidelines and see if we couldn't work out new policies and guidelines.

Q. What was the reaction to that?

A. The reaction was "No".

Q. What did you have in mind in terms of new guidelines?

A. I don't know. I had invited Attorney John Schuchardt

previously to sit in with me. In fact, I talked to him on Friday the 5th and told him that I invited him to be present at my meeting on Monday with them. I felt they might listen to him more so than me. At first he consented, and then on Saturday the 6th he came to the prison in the company of some Negro singer that had performed at the inauguration -- he came to put on a show at the prison. At this time he stated he felt it would be probably not... probably be best if he didn't sit at this meeting with me on Monday. However, later he would be very happy to, if there were a meeting to discuss new guidelines. May I clear up one thing -- one point I forgot. At the Friday night meeting, the original meeting the... it wasn't Friday... at the Monday meeting when it was resolved -- that it was clear that I wasn't going to accept these articles and it was clear they weren't going to remove or extract the objectionable articles -- it was either send out the whole thing or nothing -- it was Lou Bowers and Cronin who mentioned they were going to contact ACLU regarding this matter. I said "Would you like me to contact -- I will contact them for you", and they wanted John Schuchardt. So, I did telephone John Schuchardt on their behalf.

Q. When the meeting broke up that night how did things stand at that point?

A. Friday night?

Q. No, this would be Monday night.

A. Monday afternoon -- they were going to go to court.

Q. There was an impasse?

A. There was an impasse. We were going to go to court.

Q. Did they actually tell you that?

A. Right.

Q. Following that night, were any further attempts made to collect issues of the Luparar that had already been distributed?

A. I gave them a couple days to turn in voluntarily the issues which were distributed. I think we picked up 10 or 15 more copies.

Q. Was it your concern if copies were available within the prison they would find their way outside, or was it the fact they were within the prison which disturbed you?

A. Both -- I felt if they were in and not picked up by us they would have a way of getting it out. Second... what was the other thing?

Q. Were you concerned about the issues being in the prison for some other reason?

A. Since it was not an approved document and in its present form it was...

Q. It was something that should not have been there?

A. Yes, it could be construed as contraband, which is anything that is not approved.

Q. Were you concerned about security?

A. No.

Q. If you can speak for the Corrections Department, had this issue been printed on the outside, would the department have objected to its being distributed within the prison?

A. I can't speak for the department.

Q. As Warden, would you have had any objection to its being distributed within the prison?

A. I don't know. Sometimes we don't know the answer to something until the question is resolved at the time it comes up.

Q. Personally and in your capacity as Warden of the prison, did you have any objection to that issue being distributed inside?

A. Yes I did have.

Q. What was the basis for that?

A. The same thing again. Same as I have repeated throughout. It is uncomplimentary and attacks personalities.

Q. Did you or any other officials, to your knowledge, ever consider putting a disclaimer on the Luparar, to the effect that this did not represent the views of the State prison or any other aspect of State government?

A. Not to my knowledge.

Q. Suppose that were done?

A. My personal feeling is that there should have been a

new meeting with the total editorial staff, and if the current guidelines and policy were not agreeable to all they should have been revised and rewritten.

Q. Except that the dispute seemed to be a very fundamental one -- how could the guidelines have been rewritten so as to avoid this problem?

A. New guidelines could have had a disclaimer type of thing, for example. My statement to them was that the Luparar in its present form does not comply with the guid lines as established in November, 1971; therefore, it was objectionable.

Q. If there were attacks on personalities and the Luparar carried a disclaimer of responsibility, would that satisf you as Warden?

A. I don't know if it... it might satisfy me, but I don' know if it would satisfy the department.

Q. Again, what concern is it of yours that these individuals are attacked in the inmate paper?

A. I have a lot of unhappy employees because of articles that appeared about them in the paper. It is my job as Warden to attempt as much as possible to keep the residen happy and employees happy. When they are unhappy and dis satisfied there may be some effect upon their job, so I should try to eliminate whatever is making them unhappy.

Q. What about public figures and any concern that you may ha

A. Yes, I think I said a little while earlier that I was, so long as we were contributing to the publication of the paper and so on. For us not to object to articles against Mr. Leahy would only be saying we supported this kind of thing.

Q. Wouldn't it be fair to say a way to handle that would be a disclaimer?

A. I suppose it is, I don't know. I am not conversant in those things.

Q. After a decision was made that this issue could not be published as is, was that decision reviewed by anyone... let me phrase the question this way: after you had made a decision... was Mr. Smith the Warden at that time?

A. I was Acting Warden at that time.

Q. Did you have any further contact or correspondence with the Commissioner's office about this decision?

A. I think I wrote him kind of a summary memorandum covering the events of the last three days. To my recollection that was the end of that particular...

Q. Do you have a copy of that particular memo in your possession?

A. Not in my possession, on me. I have a copy in my files.

Q. Could you obtain it?

A. I don't know about that. We will have to look into that.

Q. I will make a request that you supply us with that copy of that memorandum or we will file a Motion to produce i Can you recall the last time was you had correspondence with the Commissioner about the case?

A. No.

Q. There haven't been any further letters or communications since this memorandum?

A. I don't recall any.

Q. Did the Commissioner ever indicate to you he had consult anyone else in making his decisions concerning which art cles were offensive?

A. I don't recall.

Q. Do you know the current cost of producing an issue of th Luparar?

A. No.

Q. Do you have the means to obtain that information -- coul you obtain that information from the printer?

A. This information could be obtained, yes.

Q. Would you be willing to do so?

A. I suppose, among all my other duties.

Mr. Kohn: Thank you. I have a couple of other questions -- to the best of your knowledge is the type of thing that appears in these inmate articles the sort of thing that goes around by the prison grapevine anyway?

A. I suppose it does.

Q. If inmates feel some way about Captain Toomey or the fact that Mr. Leahy has granted someone immunity, is that the type of thing that would get around?

A. Oh, sure.

Mr. Kohn: I have nothing further.

Deposition closed at 12:20 p.m.

I have carefully read the foregoing deposition and the answers made by me are true.

_____
Julius B. Moeykens

State of_____

County of_____.

At_____in said County this___day of_____,1973 personally appeared the above named JULIUS B. MOEYKENS and made oath that the foregoing answers, subscribed by him, are true.

Before me,

_____
Notary Public

CERTIFICATE

I, Christine A. Bodette, Notary Public and Court Reporter, hereby certify that the foregoing pages, numbered 4 through 63 inclusive, are a verbatim transcription of my verbatim stenographic notes of the deposition of JULIUS B. MOEYKENS taken before me as Notary Public on Wednesday, June 13, 1973 at 10:00 a.m. at the office of Vermont Legal Aid in Montpelier, Vermont and transcribed under my direction for use in the trial of THE LUPARAR: JOHN SHUTTLE, Editor of THE LUPARAR et al, vs. R. KENT STONEMAN, Individually and as Commisoner of Corrections of the State of Vermont et al now pending in United States District Court for the District of Vermont.

COURT REPORTERS ASSOCIATES

By: s/Christine A. Bodette

109 South Winooski Avenue
Burlington, Vermont 05401
July 9, 1973

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UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF VERMONT

THE LUPARAR; JOHN SHUTTLE, Editor of THE LUPARAR; CRAIG MURRAY, Individually and on behalf of all others similarly situated

v.

R. KENT STONEMAN, Individually and as Commissioner of the Department of Corrections of the State of Vermont; MICHAEL MOEYKENS, Individually and as acting Warden of the Vermont State Prison at Windsor, Vermont.

Docket No. 73-95

D E P O S I T I O N

- of -

KENT STONEMAN

taken on behalf of the Plaintiffs on Tuesday, June 26, 1973 at 1:30 p.m. at the Department of Corrections, Montpelier, Vermont.

APPEARANCES:

David Wilson, Assistant Attorney General and Charles A. Bristow, Assistant Attorney General, on behalf of the Defendants;

Richard Kohn, Esquire, Vermont Legal Aid, St. Johnsbury, Vermont and Paul Berch, Esquire of South Pomfret, Vermont, on behalf of the Plaintiffs.

STIPULATION

It is hereby stipulated and agreed by and between the attorneys of record for the respective parties hereto, as follows:

1. THAT the testimony of KENT STONEMAN may be taken and treated as if taken pursuant to notice and order to take depositions and that all formalities of notice and order are waived by the parties and the signatures to this stipulation are in like manner waived.

2. THAT all objections except as to matters of form are reserved until the deposition, or any part thereof, is offered in evidence.

3. THAT the deposition may be signed by the said KENT STONEMAN before any Notary Public.

4. THAT all exhibits offered for identification are reserved by Counsel until the time of trial.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF VERMONT

THE LUPARAR; JOHN SHUTTLE, Editor of THE LUPARAR; CRAIG MURRAY, Individually and on behalf of all others similarly situated :

v. : Docket No. 73-95

R. KENT STONEMAN, Individually and as Commissioner of the Department of Corrections of the State of Vermont; MICHAEL MOEYKENS, Individually and as acting Warden of the Vermont State Prison at Windsor, Vermont. :

Pursuant to the foregoing waiver of notice to take deposition upon oral examination for use in the trial of the above-entitled cause, I, Christine A. Bodette, Notary Public, on Tuesday, June 26, 1973 at 1:30 p.m., took the deposition o KENT STONEMAN at the Department of Corrections, Montpelier, Vermont.

The Plaintiffs were represented by Richard Kohn, Esquire, Vermont Legal Aid, St. Johnsbury, Vermont and Paul Berch, Esquire of South Pomfret, Vermont; the Defendants were represented by David Wilson, Assistant Attorney General and Charles A. Bristow, Assistant Attorney General, Montpelier, Vermont.

COURT REPORTERS ASSOCIATES

By: s/Christine A. Bodette
Notary Public

(My commission expires Feb. 10, 1975)

KENT STONEMAN, being duly sworn by the Notary to tell the whole truth and nothing but the truth, deposes and says as follows:

Examination by Richard Kohn, Esquire:

Q. Would you state your name, please.

A. Kent Stoneman.

Q. And where do you live?

A. Barre, Vermont.

Q. And what is your position?

A. Commissioner of Corrections for the State of Vermont.

Q. And how long have you held that position?

A. Since September, 1971.

Q. When was the first time that you recall that any problems arose concerning the inmate publication at the State Prison?

A. Any problems from what kind of standpoint?

Q. Had any complaints come to you through department channels or otherwise?

A. Some telephone complaints came from Mr. Moeykens, who was acting Warden at the prison, beginning in early January of 1972. At one point... I believe this was November, 1972, I had a copy of a memorandum from one of the staff people at the prison objecting to a particular article.

Q. Do you have a copy of that memorandum in your files now?

A. I think I do... yes, it is from Dr. Hall, dated November 6, 1972 and it refers to the November issue of The Luparar.

Q. May I see it... are you willing to make a copy of this available to us?

A. Yes.

Q. Now after receiving that memorandum did you take any action?

A. I don't remember.

Q. Did you discuss the matter with Dr. Hall at all?

A. No.

Q. Do you remember discussing the matter with any other official or person within the department?

A. The only discussions I remember were with Mr. Moeykens, and I don't remember whether this was specifically on Dr. Hall's complaint or on Mr. Moeykens' comment that he was less than happy about some of the items that were contained in some of those issues.

Q. Do you recall reading an item contained in that issue "The Block"?

A. Yes, I did.

Q. Do you recall your reaction to it?

A. I felt that it was improper.

Q. Can you tell us on what grounds?

A. As I remember, it was related to...

Q. We have a copy of this here.

A. Yes, it raised some implications about individuals by name.

Q. These were personalities?

A. Yes, personalities.
Q. Would you point out to me in the article what person you are referring to?
A. Mr. Moeykens, Mr. Robert Smith...
Q. Mr. Smith was the... had been the Warden at the prison?
A. That is correct.
Q. I would like to stipulate that Exhibits 1 through 4 in the prior deposition of Mr. Moeykens be so marked in this case.
A. I would like to add one further comment to that, and that is in the same issue. I found another item which I considered more objectionable than the one just cited.
Q. But Dr. Hall hadn't complained about any other article?
A. I don't know. The only notice I got in writing was the one I indicated.
Q. As you understand it, what was the procedure that was set up for clearing issues of The Luparar as they came to press?
A. This goes back to the time that the guidelines for publication of an inmate newspaper were developed, and that was put into writing... I think November 3, 1971. That established... the guidelines were made up by a combined staff and inmate group of people. It was my understanding that the editorial board would also be made up of a combined staff and inmate organization.
Q. Did it turn out that way?
A. To my knowledge, yes, it was that kind of involvement.

Q. Do you know whether at the present time there are any officials from the prison now on the editorial board... or I should say personnel?

A. At the present time there is no newspaper, and...

Q. Let me relate my question to the time when issue number twelve came out -- the issue that is in controversy here.

A. Then would you state the question again?

Q. I just wondered whether there were any members of the personnel of the facility on the editorial board?

A. I don't know.

Q. What was the procedure, then, for clearing an issue of The Luparar?

A. As I remember, the guidelines indicated that all articl would be approved by the editorial board.

Q. Were the guidelines set up after you had become Commissione or before?

A. After.

Q. Did you have any personal part in setting those guidelines up?

A. No.

Q. Did you have any discussion with anyone who was representin the Corrections Department who was involved concerning what the guidelines should be?

A. I think the way I should respond to that is this: the idea of an inmate newspaper came out of a list of demands

presented by the inmates following a riot at Windsor sometime around the end of September, 1971. I talked with Warden Smith at the time about it -- the possibility of an inmate publication -- and we both felt that it was a good idea that inmates should have a chance to make their views known and that we would encourage and help to fund and print a newspaper, subject to the working out of guidelines that everybody would agree on. Those guidelines were subsequently developed. I was not involved in the formulation; however, I did receive a copy of the guidelines and did not object to that.

Q. Do you know where the division between articles dealing with personalities and issues first arose?

A. No I don't.

Q. So you weren't... you didn't have any role in formulating that division in terms of what would be objectionable and what would not be?

A. I don't recollect any involvement. I don't know for certain that there wasn't any involvement; I simply don't remember.

Q. To the best of your recollection, after the guidelines were formulated you were given a copy of them?

A. That is correct.

Q. And this would have been sometime in November of 1971?

A. It was dated November 3, 1971.

Q. Did you approve those guidelines or take any specific action with respect to them?

A. I didn't disapprove them, which is the same as saying "yes", I approved of the guidelines.

Q. Now after the November issue, which Dr. Hall had sent you this memorandum on, were there any other complaints that came to your attention concerning material in The Luparar prior to that January issue, which is the issue that we are concerned with?

A. Well, first Dr. Hall sent the memo to Mr. Moeykens an it was subsequently sent to me. There was a telephone conversation or conversations with Mr. Moeykens about the December issue.

Q. Did you initiate those conversations?

A. I don't remember.

Q. Were there any memoranda...

A. I don't remember, but I think it would have been Mr. Moeykens.

Q. Do you recall whether there any memoranda that went betwe your office and the prison concerning the December issue?

A. No.

Q. Do you recall exactly what the exchange between you and M Moeykens was over the December issue?

A. No, I don't recall the details. I do know that Mr. Moeykens referred to articles that criticized both he and

the Commissioner of Corrections, and I don't know my exact response -- but the general nature of the response was that... after all, we are public officials and there is a certain amount of criticizm that you take simply by being in those positions.

Q. Did you ever see the December issue personally?

A. Yes.

Q. Do you recall reading any of the articles in that issue that were complained about?

A. Yes; I read, to my knowledge, every issue of The Luparar.

Q. Do you recall any specific article in the December issue that was offensive by your standards?

A. There were a number of items in the December issue that I felt were very questionable kinds of articles.

Q. Was any action taken concerning the December issue?

A. No action was taken by me. I don't know whether any other action was taken at the prison.

Q. If you were shown a copy of the December issue of The Luparar, do you think you could select out those articles that you found questionable?

A. Yes.

Q. Do you have a copy here?

A. Yes, I do.

(December issue of The Luparar is marked by Reporter as Deposition Exhibit Number Six.)

Q. I hand to you that copy of the December issue and ask you to point out the articles.

A. There is an article on page 6 which refers to the hospital at the prison, with a question of whether it is a hospital or Seth Meade's private health club, Seth Meade being the hospital supervisor at the time. There is a criticism on page 16 which refers to the Public Defender's Office.

Q. What does it indicate about the Public Defender?

A. The caption reads "Oh what a terrible day I had. One of my clients refused to plead guilty. I just don't know what to do. If we go to trial and he gets acquitted I am finished in politics"... and so on. On page 18 there is an item I find particularly objectionable. It questions why the Commissioner has appointed Mr. Moeykens as acting Warden... 'this man is nothing but a moron' and so on. There is another item on page 18 which refers to the "Commissioner's office of corruption". There is an article on page 21 which contains a reference to aborigines appointed as a keeper.

Q. Was that in respect to a particular individual or was that a general article?

A. Well, since the article refers to Windsor Prison safekeeping and the commitment of people here for trial, as provided by the Vermont Department of Corrections, it

would appear to be connected with the Vermont Department of Corrections. It doesn't name a specific individual. I think those are the main articles I was concerned about.

Q. Concerning the article that deals with the prison hospital, was it your objection that the article dealt with personalities -- and the reference was to Mr. Seth...

A. Seth Meade. That was my objection, yes.

Q. Was there an issue also contained in the article?

A. I would have to look at the article again to answer that question. I do see that there is an accusation there about the hospital.

Q. Isn't there an issue there concerning the hospital facilities?

A. No, it appears to me there is not -- except that it refers to hospital beds being empty and how 'would be' patients at the prison hospital are dealt with.

Q. Isn't medical treatment the issue here?

A. I think you could say there is an issue, although I am unable to clearly define what it is here. My objection, again, is to the use of the reference to "Seth Meade's private health club". I would see no objection to simply criticizing the quality of the medical care.

Q. Did you feel you had the authority in December to suppress this issue if you were so inclined?

A. I felt from the very beginning when I agreed to support

the operation of the prison newspaper that I could, at the least, hold to the guidelines established.

Q. So that would be your decision -- if you felt a particular issue or article exceeded those guidelines then you had the authority to suppress it?

A. Yes, or I also feel that I had the authority to preven distribution -- and that is what was done in the case of the January issue. I would feel the same if I felt they were a concern for the security or programs in the institution, also.

Q. Did you feel these articles related to the security of the institution?

A. Yes, in this sense: that when you begin to have an attack on people who work inside an institution it has a decided effect on morale of the people in the institution. Bad morale generally leads to lax security and other problems. It also leads to confrontation by the staff and inmates where there is already...

Q. Did you undertake an investigation to determine whether these articles did affect morale at the prison?

A. No I did not. It was clear to me from conversations that it most certainly had an effect on the Warden's morale.

Q. You are referring to Mr. Moeykens?

A. I am referring to the acting Warden, Mr. Moeykens.

What I did do, however, about that time I was concerned about the direction that The Luparar seemed to be going. This was toward the end of 1971, basically beginning in November and December. At one point... well, we had conversations with a reporter about the possibility of his offering himself as a volunteer to work with The Luparar staff if they would accept him, to try to put some kind of professional journalistic standards...

Q. Nothing was done about that?

A. The reporter finally declined after a considerable period of discussion on the grounds he simply didn't have the time to give to it, even though he felt it would be useful and would like to do it.

Q. Now as far as the December issue was concerned, you took no action -- that issue went to press?

A. Correct.

Q. Were you concerned about distribution of either the November, December or January issue within the confines of the prison, or were you more concerned about distribution outside?

A. I was concerned about distribution of any kind.

Q. Why did you feel that way with respect to distribution outside the prison?

A. There were items in the January issue which I felt were slanderous and libelous in nature, which went beyond

the bounds of decency, which applied to both people inside the Department of Corrections and outside the Department of Corrections.

Q. Did you feel these articles were worse than the ones that had been printed previously?

A. Yes.

Q. I will show you what has been marked as Plaintiff's Number Four, which is the January issue, and ask you to mark which articles you found offensive.

A. I would like to take a copy I have already marked in my office.

Q. All right, let me ask you a few preliminary questions. How did the January issue first come to your attention?

A. I had a call from some staff member at Windsor -- I think it might have been Allen Miller, I am not sure -- to the effect... I don't know the exact wording... that there were some articles in this issue that looked really bad.

Q. Can you describe who Mr. Miller is?

A. Supervisor of our Institutional Industries. He has responsibility for all industries, including the printing press. My response to Mr. Miller... and again I am not sure he was the individual who called... I said I would like to have read to me some of the articles you think are offensive or go beyond the bounds. They were read to me

and I asked that a copy be brought to me that day in Montpelier. A copy was delivered here to me.

Q. To the best of your recollection it was Mr. Miller who called?

A. That is as I remember it. I am not sure about that.

Q. Did Mr. Miller have an official status in terms of the distribution of The Luparar -- was he a member of the editorial staff?

A. I don't think... he is responsible, however, for the operation of the printing press.

Q. By that do you mean the physical acts of running the printing press?

A. And the supervision of the people who work in that and other industries.

Q. Yes, but does he have supervision of the material that is printed?

A. I don't know at that time or not.

Q. So on the basis of this call you asked that a copy of The Luparar be sent up to you?

A. Yes, hand delivered.

Q. Are you sure it wasn't Mr. Moeykens who called you about this?

A. I am not sure who called.

Q. Was there a staff member at the prison who was supposed to okay articles of The Luparar as they came out?

A. As I remember the guidelines, yes. The editorial staff would approve or reject articles.

Q. Wasn't there a staff member of the prison who was designated to review articles, such as Mr. Hall, who I believe was the librarian, or Mr. Tussler?

A. My assumption was that all the way through there was a combined inmate and staff editorial board and my assumption was that continued to be in effect and somebody on the prison staff had that function all the way through.

Q. I will show you Plaintiff's Number Four and direct your attention to page 3, which lists the editorial staff. I ask you if there are any facility personnel listed there?

A. No, there is not.

Q. And you can't say whether there was a system for approval of the issues of The Luparar as they came to press?

A. The only system I know of was spelled out in the guidelines.

Q. I show you what has been marked as Plaintiff's Two for identification and ask if you will identify those?

A. That is the statement of policy and guidelines drawn up.

Q. Those are the guidelines you have been referring to?

A. Correct.

Q. Can you tell me what in there refers to approval of issues?

A. Last paragraph on the first page. It says that the

editorial staff reserves the right to approve or reject articles.

Q. But the editorial staff, as it evolved, was simply composed of inmates; was it not?

A. Again, I would go back to that earlier statement that my assumption was that the original guidelines were being held to and it was a combined inmate and...

Q. According to the original guidelines which have been marked as Exhibit Number Two there is no specific requirement that any issues be approved by a member of the Corrections Department?

A. That would appear to be accurate; however, I do know that all the early issues did include staff people on the editorial staff -- prison personnel.

Q. Do you have one of the earlier issues that would clarify that?

A. The dropping of the prison staff members names from the listings apparently occurred about the same time we began to see articles that were considered objectionable.

Q. Are you stating that as a fact -- do you know that of your own personal knowledge, or are you guessing?

A. No, I don't.

Q. I believe your testimony with respect to the January issue of The Luparar was that someone called you from the facility and you asked that a copy be sent up?

A. Yes.

Q. And you also asked certain articles be read to you over the telephone?

A. I asked that some examples be read to me.

Q. Do you recall when the issue reached you?

A. The same day the telephone calls were made and the same day the distribution was stopped.

Q. Directing your attention to number twelve of The Luparar, would you point out the articles which you deemed offensive?

A. The inside cover, which is indicated as page 2.

Q. That refers to Mr. Leahy?

A. This refers to Patrick Leahy.

Q. What did you feel was the import of that article?

A. It was clearly an attack on Pat Leahy.

Q. Nothing more than that?

A. I could see nothing more than that in it.

Q. Was it your judgment that the thrust of the article was accusing him of being a homosexual?

A. My judgment was that it was simply a personal attack on an individual.

Q. You don't see any underlying issues?

A. I wasn't looking for that. I was simply reacting to what was clearly purely an attack on an individual.

Q. Whether the article contains discussions on an issue or

not is irrelevant -- the only question is whether it also contains a personal attack on an individual?

A. My judgment is that that does not deal with an issue. It deals with a personal attack.

Q. You just testified you hadn't been looking for an issue?

A. What I testified to was that I was not so much concerned about the content of the personal attack -- that had nothing to do with an issue.

Q. I ask you again, do you perceive an issue in the article about Mr. Leahy?

A. No.

Q. Have you read that over just now, and that is your judgment?

A. I have read it over today.

Q. Would you go on and point out...

A. Okay, on page 3 there is a line which contains a reference to... well, the first paragraph contains a reference to Mr. Tussler, the Director of Education. It has a comment about maybe he has a hand in the cash register. It goes on to say that maybe he has some information -- we should shock it out of him.

Q. Do you perceive any issue pertained in this article?

A. I felt the important thing about this article was that it is an inflammatory attack on an individual.

Q. What do you mean by inflammatory?

A. I see the article is by Jack Shuttle, and Mr. Shuttle

may be able to make a distinction between some figurative statement about shocking information out of someone and a literal interpretation -- but I am not sure every individual would be able to make this kind of interpretation.

Q. Did you discuss this with Mr. Moeykens?

A. I don't remember.

Q. You don't remember whether you discussed with him whether the article entitled "Education" was inflammatory or not?

A. I do not remember.

Q. Wasn't Mr. Moeykens the man on the spot -- wasn't he the one who was directly in the prison every day?

A. Mr. Moeykens was the man who was in charge of the prison, and we did discuss a number of items that I saw objectionable in our conversation. This conversation took place over the telephone, and I don't recall the exact details of every item we discussed.

Q. So you don't know whether Mr. Moeykens shared your view that this article was inflammatory?

A. No, I don't.

Q. Could you please continue?

A. On page 4 there is an article about Jerome Toomey which again refers to an individual by name and implies ... well, there are a number of comments made here which imply this has helped him get promoted within the institution and how perhaps he might get promoted.

Q. You think this is not a legitimate issue?

A. I think it would be legitimate if Mr. Toomey were not mentioned by name.

Q. All right then, is that your comment -- this would be a legitimate issue if it did not mention any personalities in doing so?

A. I think in this particular article the discussion would be appropriate had it not focused on an individual.

Q. Didn't this deal with the fact that Mr. Toomey's father was also an employee of the institution and a high officer at the institution?

A. I don't see any reference to that.

Q. Let me direct your attention to the third paragraph, "He was refused promotions because of a State policy ruling where a man cannot be placed under the direct supervision of his father or a relative". If they omitted Mr. Toomey's name, wasn't it still perfectly obvious who was being referred to in this article?

A. No, there are other employees in the department who might be in this same kind of position. I don't know whether it would be obvious or not.

Q. You think there might be another situation where a man might be under the direct supervision of his father at the State Prison?

A. It is not likely to happen now because of the policy

prohibiting it. Again, I simply don't know whether everyone would have to come to that conclusion. I would reiterate that my objection was the specific use of the name there, and the article would have been legitimate without that.

Q. Can't you visualize some circumstances under which it would be impossible to discuss an issue without referring to a particular individual?

A. That may be, but I don't find it in that particular article.

Q. Could you please continue?

A. On page 8 there is a statement in the top half of the page which reads -- "Mr. Moeykens -- this man does not have the qualifications to run the prison, and it is well known he is a psychopath". My objection is the statement referring to Mr. Moeykens as a psychopath.

Q. Would it surprise you to know that on deposition Mr. Moeykens referred to this article and made no mention he had been called a psychopath in it?

A. I am not here to speak for Mr. Moeykens.

Q. I just asked whether it would surprise you if Mr. Moeykens had so testified?

A. Well, I don't know. I haven't been faced with that.

Q. Let's assume Mr. Moeykens was not disturbed by the fact that in this article he had been referred to as a psycho-

path. Would that affect your judgment as to...

A. Not in the least, because in my judgment that kind of name calling against any staff member or any other individual is not an appropriate kind of statement. It most certainly is an attack on an individual -- an inflammatory statement.

Q. You keep using the word "inflammatory". Do you mean in the sense it could provoke a riot?

A. That statement alone is unlikely to provoke a riot. That, combined with a whole series of other items in this issue and some earlier ones, has the potential for creating the kind of disturbance it might lead to that... but in itself it would not.

Q. Did you specifically discuss with Mr. Moeykens whether to permit this magazine to be distributed and what would be done as far as having a restriction placed on the contents?

A. I don't remember that.

Q. You don't remember specifically discussing that with him?

A. No.

Q. I show what has been marked as Plaintiff's Exhibit Number Three and direct your attention to... would you identify that for the record, please?

A. This is a letter dated January 29, 1973, to Richard Kohn from David Wilson, Assistant Attorney General.

Q. Was this letter written after consultation with you?

A. Yes.

Q. Would you direct your attention to paragraph six, please. What does paragraph six indicate with respect to this iss of The Luparar creating a security problem?

A. It says the confiscated edition of The Luparar probab does not constitute a security problem under the very rigid test the courts have laid down.

Q. Before that letter was written did you consult with Mr. Moeykens?

A. As to the content of this specific letter?

Q. As to whether it created a security problem.

A. Again, I don't remember. However, there is one thing that I would like to relate to that.

Q. Well, Commissioner, I have been giving you substantial leeway in answering my questions. I think in the interes of getting done with this thing if you have any additions your counsel will be able to ask you questions.

Mr. Wilson: I am going to object to any further reference here... I think you are getting into an attorney-client privilege here and asking if he conferred with me. The letter fairly represents a letter from me to you stating what I thought the legal position in the case was at the moment. I object to your questioning him regarding my letter to you. You are specifically getting into whether or not he has conferred with his attorney. I think this is objectionable and would like to note it for the record

Q. I have other questions which I don't believe will run afoul of your objection, but doesn't paragraph six of the letter contradict your testimony today?

Mr. Wilson: Object for the same reason.

A. I don't think it does.

Q. Would you return to the issue of The Luparar and continue?

A. On page six there is a reference to Mr. Coxon and Mr. Moeykens. Again, I feel this article would be legitimate without the specific names of Mr. Coxon and Mr. Moeykens?

Q. I see, so if the prisoners wrote an article about officials of the prison jockeying for position because they are ambitious men, as long as they didn't mention their name they would be okay?

A. That is correct.

Q. Continue.

A. On page 22 and the top portion of page 23 -- I consider all that to be attacks -- personal attacks on individuals.

Q. So if a prisoner had written an article attacking the vocational rehabilitation program at the prison without mentioning the name of the director that would be okay?

A. If the article had been written as a criticism... this goes beyong just the vocational rehabilitation program, but if the programs were criticized it would probably not be seen as an objectionable article. These are very specific statements, however.

Q. Does this article also contain issues, in your judgment, or not?

A. In my judgment it is primarily an attack on individual -- almost entirely an attack on individuals. If there are issues involved in there they are completely lost in the personal attacks on individuals.

Q. Well, the prisoners who are writing this magazine are basically unlettered people, aren't they?

A. I don't know that.

Q. Can't you judge that by the quality of the form... the writing in general?

A. I don't think I can judge the quality of the writing ability of people by the articles in this -- I don't know what you mean by "unlettered".

Q. Isn't it possible that the men who write these articles express themselves this way because it is the only way th know?

A. If you are talking about the quality of what they wri when you refer to "unlettered" I think they are quite capable of dealing with issues and understanding when the are not attacking individuals.

Q. Couldn't you concede that in some circumstances in order give rise to the issues or discuss an issue you have to

attack the man who is in the particular job?

A. I think you may have... may legitimately refer to an individual in some instances in describing what he does or doesn't do. To me, that is quite different from statements that are contained in these articles like '...can convict for a hell of a lot less'. This is in reference to Judas. It refers to Mr. Baso as the only thing he is good for is drawing his check every week.

Q. Isn't it simply a matter of style -- doesn't it indicate the writer thinks he is not a good art instructor?

A. I think it is not a matter of style. The only thing one has to do is refer to the original guidelines about dealing with personalities.

Q. I show you paragraph two and ask you to make a statement concerning the original policy -- what does it say about personalities?

A. "Editorials will attack issues and not personalities". There is also a reference in the next paragraph which says "Please remember that inflammatory articles will not be published".

Q. With respect to the provision that editorials will deal with issues and not personalities, do you see a distinction between editorials and articles?

A. This particular article carries the heading which says "The Destruction of Windsor" and it is by editor John Shuttle -- it is signed.

Q. Is there a distinction -- is that the distinction between editorials and articles -- whether it is signed by someone as editor or whether it is unsigned?

A. I find it difficult to determine what is and isn't an editorial in here because they are not laid out in any sections dividing the various kind of articles, that I can determine.

Q. Aren't editorials generally signed and articles generally unsigned, with reference to an ordinary newspaper?

A. Yes, I think that is accurate.

Q. Isn't it possible what the authors of the guidelines were concerned about would be unsigned articles that would attack personalities?

A. I don't know what they had in mind. I wasn't there.

Q. If you examine Exhibit Two, didn't that use the word "articles" throughout those guidelines?

A. The word "articles" is used many times.

Q. So if they used the word "editorials" it is likely that would have some significance; is that correct?

A. I don't know.

Q. I show you now what has been marked as Plaintiff's Exhibit Number One and ask you to identify that for the record?

A. This is a statement given to the inmate members of The Luparar by Mr. Moeykens on January 5, 1973.

Q. Did you have anything to do with drafting that statement?

A. I did.

Q. Is that your language that appears in the statement?

A. I believe it is.

Q. And with respect to personalities, what does that statement say?

A. It says "Issues to be attacked and not personalities".

Q. So any distinction between editorials and articles is not being followed in your statement?

A. This statement does not make a distinction.

Q. This statement also says that uncomplimentary articles will not be published; is that so?

A. My statement does not contain that.

Q. Would you look at your statement?

A. That is not my statement.

Q. Do you know where... do you have a copy of your statement here?

A. I do.

Q. May I see it please?

A. Yes.

Q. Assuming that Exhibit One was provided to us by the department, can we assume there were changes made in your statement by Mr. Moeykens or by other corrections personnel?

A. Yes, I think that assumption can be made. When I gave the statement which I drafted to Mr. Moeykens I indicated to him that this was a suggestion. He didn't have to be bound by it, but I would expect... this was a general... that was the essence of the point that I wanted to get across. If he wished to say it in some other way or disagreed with it he would have that option. I dictated that over the telephone to a secretary at the prison.

Q. Directing your attention again to Exhibit Number Two, is there anything in the original guidelines concerning uncomplimentary articles, as distinguished from inflammatory articles?

A. No.

Q. So that was a new instruction that was being placed on the publication of The Luparar?

A. It was not contained in the guidelines and it was not contained in my suggestion or statement to Mr. Moeykens.

Q. At the time that Mr. Moeykens called you on the telephone initially to complain about the January issue, were you aware of whether it had been distributed within the prison or not?

A. My general recollection... and again, I point out I am not sure it was Mr. Moeykens... my general recollection was that I was told that the materials were about to be mailed out and there was some general discussion on whether they

had, in fact, been mailed out. I determined that they hadn't, so it is my understanding distribution had not been made at that time.

Q. At some point were you made aware distribution had occurred?

A. I learned later that all the copies printed could not be accounted for.

Q. Was this on January 5th, the day that the complaint had been originally made to you?

A. I am not sure.

Q. Now, did you at some time become aware that the issue had been fully distributed within the prison?

A. Again, I only became aware that copies couldn't be accounted for.

Q. Did you ever issue any orders that all copies by retrieved?

A. Yes, I did.

Q. When was that?

A. That was during my discussions that day with Mr. Moeykens. I don't remember by precise instructions, but it was generally that no distribution of that was to be allowed.

Q. Did you mean distribution within the prison or outside the prison or both?

A. Any kind of distribution.

Q. Do you know whether a search was made of the prison to retrieve the issues?

A. I am not certain about that. As I remember, I was told that there was an attempt to round up the copies.

Q. Were you ever told that that attempt was unsuccessful?

A. Yes, I was told that they were not able to find all the copies and that some had probably gone out.

Q. Are you aware of any disruptions that occurred within the prison within a week or two following the distribution of the issue... that would have been in January?

A. No.

Q. You have testified that you feel that distribution in the prison could compromise the status of the personnel -- could make things difficult for them, lower their esteem; is that accurate?

A. Yes, I think so.

Q. What about distribution outside the prison -- what was you objection there?

A. My objection was based, again, in part on what I consider slanderous and libelous attacks on individuals outside the system. The State, from the beginning, had helpe to subsidize this publication of The Luparar and had some concern about the legality of the Department of Correctio participating in a publication of what looked to me like slanderous and libelous statments.

Q. Did you ever resolve that question as to whether you or the institution would be liable?

A. No, I have not resolved that.
Q. Had you directed you attorneys to give you an opinion on that?
A. No.
Q. So when you ordered suppression, then, you did that without actually knowing whether the institution would be liable or not; is that right?
A. First of all, I did not order suppression. I ordered an end to distribution and I had doubt in my mind about the legality of that, but I did not have a clear legal statment.
Q. What is the distinction in your mind between suppression and ordering them not to distribute it?
A. The distinction in this particular instance was that we offered to allow distribution of this particular issue if those sections found to be objectionable were removed. We also offered to meet and work up new guidelines if the original guidelines were no longer satisfactory.
Q. But in terms of issues, as it was printed up, you would suppress it?
A. We suppressed the distribution.
Q. Did you have contact with any of the people who were attacked in this issue of The Luparar outside of the prison?
A. No.
Q. Did you ever have any conversation with Mr. Leahy, for

example, concerning the fact he was being attacked in this issue?

A. There was a conversation. I don't remember when, but I do know that there was a conversation at some considerable time after January 5.

Q. Between whom?

A. It was myself and Mr. Leahy.

Q. Did you initiate the call?

A. It was not a call. As I remember it, we simply ran into each other someplace at a meeting or something.

Q. What was the substance of the conversation?

A. I don't remember exactly, but I think it was a questi as to whether I would provide a copy of The Luparar to Mr. Leahy. I indicated that I would not... I am not sure of the details. My recollection is that I indicated it looked as if there were going to be a suit filed against the Department of Corrections for preventing that distribution. I don't remember the total conversation, except that I know there was some conversation.

Q. How would that affect your giving him a copy -- the fact a suit was going to be filed?

A. I didn't know whether there was any legal problem, bu we had already said distribution would be stopped and dis tribution should include anyone else.

Q. How did Mr. Leahy know he was the subject of an article i The Luparar?

A. I don't know.
Q. Did he bring up the subject in the conversation and say, "Can I have a copy of...."?
A. I don't remember the details.
Q. Can you pinpoint more specifically when the conversation took place?
A. No.
Q. Did Mr. Leahy indicate there was any reaction about the article?
A. I don't remember any reaction.
Q. Did your department or you, personally, have contact with anyone else in State government concerning the distribution of the issue?
A. Yes.
Q. Who was that?
A. The governor.
Q. Would you describe what took place?
A. I made an appointment with the governor and went to his office with the copy of The Luparar and told him that it was my intention not to allow the distribution of that issue.
Q. Was this Governor Salmon we are talking about?
A. That is correct.
Q. Did you show him the copy?
A. I don't remember whether I showed him the copy or not.

I had it with me.
Q. Where did the meeting take place?
A. I believe in his office in the Statehouse.
Q. To the best of your recollection, what did he say?
A. The general gist of the comment was that as Commissione of Corrections I was running the department.
Q. How long did the meeting with him last?
A. I don't know... not long.
Q. Was The Luparar the only issue discussed?
A. That I don't remember, either.
Q. Did you indicate to him that there was a problem of a lawsuit against the department because of this?
A. As I remember, I indicated to him that one of the reasons I was informing him what I was doing is that I felt there was a possibility of a lawsuit.
Q. What was the date of this meeting?
A. I think it was also the 5th of January, I am not sure.
Q. Could you refer to your appointment books and make that clear as to what the date was?
A. I can refer to it, but I doubt I would find it there if it took place on the same date because there were a lot of telephone conversations.
Q. Wouldn't your secretary make a notation that you were going to be there at a certain time?
A. I keep my own calendar. I will check it.

Q. Would you, please?

A. Yes, I will have to do that later.

Q. During that meeting did Governor Salmon indicate to you an opinion on his part one way or the other on whether it should be stopped or not?

A. I don't remember any statement.

Q. Did you discuss with him a security problem within the prison or anything like that?

A. I don't remember the details of the conversation, other than I went there with the purpose of telling him what I was going to do and that there were problems of a legal suit being filed as a result of that.

Q. His only comment to you was you were the Commissioner and that was your decision?

A. That was not his exact statement, but the general content of the remarks were that I was the Commissioner of the department and responsible.

Q. You mentioned that The Luparar was originally printed with the assistance of the prisoners?

A. That is correct.

Q. Could you describe what the financial setup was and exactly how the operation worked?

A. I don't know the details of the financial breakdown, but the initial discussions I had with Bob Smith were that we would like available the printing facilities, the staff

supervision necessary while people were involved in printing that.

Q. Do you know whether any of the money for the materials came out of a specific inmate fund?

A. I do not know... no, I do not know that.

Q. You said before that, I believe, one of your objections to printing this issue was that prison facilities were being used?

A. Yes.

Q. Now, you explained you were concerned about defamation suits or libel suits?

A. Yes.

Q. Did you have any other reason for resenting the fact that prison facilities were being used for this -- was your concern about this simply the possibility of a libel suit?

A. No, I also had some concern about another aspect of the same thing; and that was the possibility of adverse effect on the Department of Corrections, generally from the legislature, for distributing an article like this, which the State has made possible to publish.

Q. So it would be fair to say you were concerned the legislature might retaliate against the department in terms of budget requests and things if this sort of thing was going on?

A. I was concerned it might have an adverse effect on the

legislature. What role that might take...

Q. Would that include budgetary reasons?

A. I think it could, yes.

Q. Let's return to the issue of The Luparar and continue. I think we were past page 20.

A. Pages 22 and 23 were the last pages I referred to. The next one is page 31, which refers to Governor Deane "dingy" Davis. This, again, appeared to me as a personal attack against an individual.

Q. And would you consider this an inflammatory article or representing a security problem?

A. I certainly consider it an inflammatory article. I don't think I would, again, single this out as being something that could create a security problem.

Q. How would this be inflammatory?

A. By itself, perhaps not; but in the context of the very personal comments made about a whole batch of other individuals in the process... all those things together... it is just typical of the same kind of attack made on staff and other people within the criminal justice system.

Q. Suppose this issue of The Luparar had been published outside the facility. Would you have objected to its being distributed within the facility?

A. I don't know. That is not the issue I am being faced with.

Q. I am just asking you -- you have referred to certain of these articles as being inflammatory and whatnot and you are also, from your testimony, concerned about this being printed on State Prison property. I am asking you if this was printed outside the prison, would you object to its being...

A. I don't know, that issue never faced me.

Q. But the material contained in this issue is the same?

A. I really don't know, because one of the problems I have with this whole series of items we have discussed in the October, November... well, November, December and January issues -- it is a whole cumulative effect of comments being made there. I have a legal responsibility and obligation to be concerned about the lives and safety of the people there, inmates and staff, about the security of the institution, about morale and about programs for inmates. It is conceivable, although I don't know that, that had this issue come by itself in isolation and not part of a chain of criticisms that I might have allowed it in, but I don't know.

Q. I am asking you to assume the exact state of evidence -- nothing is changed except for the fact that this particular issue was printed outside of the prison. I am asking you whether you would have objected to its distribution inside?

A. My response was that I don't know, except that I

would certainly have some concerns, had all three of the issues we discussed been printed outside of the prison. I would have been more likely, I think, to permit this to come from the outside, had not the State been involved in subsidizing the operation in any way.

Q. Let's talk about this series of issues from November through January as being inflammatory or creating a dangerous situation. Whether or not the issue is printed outside the prison or not, the articles are the same. Why should the result be any different?

A. Mr. Kohn, you are asking me to speculate what I would have done in a situation I wasn't faced with. The only thing I can do is speculate now, and that is that I would have been more likely to have allowed distribution of these articles had they come from the outside.

Q. Why is that?

A. Because of the concerns I expressed earlier about subsidizing this publication. That relates, obviously, more to criticism of people outside the Department of Corrections than it does inside.

Q. So it is safe if we assume that was your primary concern -- the fact this was printed on the State presses on your facilities?

A. My primary concern was that this issue and some of the items contained in previous issues helped create the kind

of atmosphere where security was in danger and where rehabilitation was in danger. I refer, again, to my earlier comments about name calling and specific kinds of attacks. It sets apart two groups of people who have to be in touch with each other every day and who can only become more polarized than ever with that going on.

Q. Why would you be more likely to allow distribution if the issue was printed outside of the prison?

A. Then I don't think the legal question that was in my mind would have come up. I wouldn't have been responsible for making that paper possible or being a party to it; and we do allow other publications to come into the correctional institutions.

Q. You have testified that in your view that you supported the idea of an inmate publication?

A. Absolutely.

Q. What were the reasons for that?

A. The reasons were, basically, that I felt inmates shoul have some part in developing correctional programs and having their voices heard as to the content of programs and what was going on in the facility. There was, for example, an earlier issue in which was something I thought was very useful. It was a proposal for a method of renovating a portion of the prison which was then being discussed in the legislature. In fact, the legislature woun

up adopting a modified version of what the inmates proposed. It made a very direct contribution on how it could be laid out. I have always been concerned about the polarization that seems to exist in institutions like Windsor between the staff and inmates, so I was concerned about communications of various kinds taking place. There was an effort about the same time to formalize communications throughout the institution... which I think can help to nip some problems in the bud -- plus, I think inmates ought to be able to have some voice. This is also one of the reasons why we changed our policy on mail. An inmate has the option of writing to a newspaper and saying anything he wants to say. As far as these articles in the January, 1973, issue, had the individual wished to send that to the Rutland Herald he could have done so.

Q. Isn't it a fact editors are selective and not all letters get published?

A. I don't know that.

Q. Isn't that a fact -- haven't you ever known of a letter to the editor that was refused?

A. I never wrote a letter to the editor, so I don't know that.

Q. Doesn't an inmate publication also serve as a safety valve to let inmates let off steam?

A. I think it has that possibility, yes.

Q. Isn't it fairly apparent from this issue that this is what they are involved in doing?

A. It is not apparent to me.

Q. As someone expert in corrections, isn't it better to have inmates vent their frustration through abusive letters or critical letters than physical or disruptive acts within the prison?

A. I am not sure that I can accept that generalization, except to say -- yes, unless there is the possibility, which I think there is in this kind of situation, for the comments being made to be so strong that they can lead to the physical acts taking place. I refer to that comment earlier about 'shocking the truth' out of someone. I think that could be literally interpreted by an inmate and could lead to such a confrontation.

Q. The factual matter here is that this was distributed within the prison?

A. I don't know that.

Q. You don't know whether this issue got through to the inmates or not?

A. I don't.

Q. Assuming it had andassuming there weren't any violent episodes for two weeks or a month after that, wouldn't that be some indication it was not inflammatory?

A. Again, I think I previously indicated that any particu

lar issue or any particular article might not have had any direct immediate disaster occuring from it. I talked about a cumulative effect building up over a period of time. My feeling was that this particular issue had gone beyond any kind of reasonable bounds and not only should that particular issue be stopped, but that there be no further distribution in the future until either the guidelines that had been written were adhered to or new guidelines be developed that would be acceptable.

Q. You are willing to go so far as to say that at the time this issue was published it didn't create an immediate danger in the prison or riot or something of that nature?

A. To my knowledge, no riot or anything did occur after that; but this is Monday morning quarterbacking.

Q. The word used in the guidelines was "inflammatory". Now, inflammatory means to inflame -- it indicates an immediate danger, does it not? An inflammatory or incendiary statement -- isn't that one that creates an immediate danger of violence?

A. I can look in the dictionary, but...

Q. Just from your own background and common knowledge?

A. My general remembrance of what the word means is that it would excite or inflame someone.

Q. Immediately, in other words, isn't that the general meaning of "inflame"?

A. I think that is right.
Q. But it is your testimony here you were more concerned about a gradual buildup over a period of time?
A. I was also concerned about specific articles in this copy.
Q. Going on from page 31, what else?
A. Page 33, which is an article which refers to the Parole Board as 'political mongrels of the old Reich'.
Q. Now, did this article refer to specific names?
A. It referred to the Parole Board. It did not refer to names. However, another item in the same article refers to Mr. Youngman, the Chaplain, by name. It refers to Mr. Youngman as a "devil", and the statement is he is rumored to be a member of the Ku Klux Klan.
Q. And again, this was an application of your rule that any personal attack on an individual is unacceptable if referred to by name?
A. The rules were not mine.It is in line with my understanding of the guidelines that were established. These were made up, obviously, by prison staff and by inmates. None of them, to my knowledge, were lawyers or journalists. This is my interpretation of the guidelines.
Q. Do you see an issue lurking in this article on page 33?
A. I think it would be possible to write an article about the Parole Board which could have criticized the Parole

Board without using that terminology. Even though the article purports to be strictly about the Parole Board, it also refers to spending money for renovations and, specifically, the Chaplain.

Q. Aren't we talking about a question of style --do you agree there is an issue here contained?

A. A possible issue, yes. There is a possible issue about the use of money being spent for renovations. I don't see any issue whatsoever in the statements about Father Youngman.

Q. Don't they make reference to the fact that there was a possibility of his being appointed to the Parole Board?

A. Yes, they do.

Q. Don't they indicate in there, also, that that would be a poor choice?

A. They indicate they would never stand the prayer of a chance once that "devil" had the reins.

Q. In other words, it would be a poor choice, as far as they were concerned?

A. I can't interpret their comment. I can only read it as it is there.

Q. Would you go on to the next article?

A. Page 38, which refers to Paul Hudson. The first three lines in the article refer to Paul Hudson, and that last line, which is referring to Mr. Hudson as a liar, thief and scoundrel.

Q. Are you suggesting the rest of the article is okay?
A. I find the substance of the entire article objectionable.
Q. And the substance of the article is that Mr. Hudson had covered up the prison personnel's complicity in an escape?
A. It doesn't say that... oh, there is a statement, yes.
Q. Isn't that what the article deals with?
A. That is certainly stated. Whether that is all of what they are talking about...
Q. If that were true, wouldn't he be a man who abuses his office -- a man without integrity?
A. I really don't know how to respond to that.
Q. Well, you could respond with "yes" or "no". If a man did cover up complicity with an escape, wouldn't he be a man without integrity? I am not asking you to say whether it is so or not.
A. If a prosecutor publicly covered up any kind of complicity of an escape, yes, that would appear to be an abuse of the office.
Q. Are there any other articles?
A. Yes, on page 34 there is a cartoon indicating an individual with the initials M.T. on his collar, a major's lea on his shoulder and what appeared to be a barrel of alcoholic beverages attached to his back.
Q. What was your objection to the cartoon?

A. I think the individual in the cartoon can be very easily identified.

Q. And who is that?

A. Michael Toomey, Sr.

Q. And what was his position at the prison?

A. His position at the time... I am not certain whether... He had been a Captain. His position was Chief of Security at the prison.

Q. Does that mean that he was in charge of the officers and the guards at the prison?

A. No, it meant that he was responsible for the general security of the institution -- for reporting problems with security to the warden and for taking corrective action when directed to by the warden. It did not involve any chain of command activity or supervising unless specifically assigned by the warden.

Q. Would he have had any direct contact with the inmates?

A. There would have to be contact because he was there. He was responsible for security, and in that respect the cell block and other parts of the facility... for specifically observing the officers in the performance of their duties and looking for security breaches... for being involved in the searches for contraband and the like, so contact would be there.

Q. When did he become Chief of Security, do you recall that?

A. No, I can obtain that information, but...
Q. What were his duties before that?
A. He was Captain -- custodial Captain.
Q. Does that mean he was head of the uniformed force?
A. Yes.
Q. What was the reason for the change of duties?
A. The primary reason was a concern on my part over problems with security in the institution, particularly as they related to major escapes in 1972, a fairly sizeable disturbance, and a number of other things.
Q. This wouldn't be considered being kicked upstairs?
A. It is a lateral transfer at the same pay grade.
Q. Do you recall whether this issue of The Luparar and the cartoon on page 34 came out shortly after Captain Toomey had been arrested for DWI?
A. I don't know.
Q. But it could be?
A. I don't really know. It seems that the arrest took place after that, but I am not certain.
Q. You knew there was an arrest, then?
A. Yes.
Q. To your knowledge, how many arrests have there been for alcohol related offenses?
A. At the moment, I remember one arrest -- that, again, I could determine by...

Q. Do you remember any other incidents?

A. What kind of incidents?

Q. Alcohol related incidents involving Captain Toomey.

A. Not at this moment.

Q. Could you refresh your memory by looking at personnel records that you have?

A. I could, except that the personnel records are kept at the State Prison.

Q. Will you be willing to get those and provide us with that information?

A. Sure.

Mr. Bristow: No, you would have to subpoena those.

Q. Assuming that the Cheif of Security has been arrested for DWI and perhaps been involved in other incidents relating to alcohol, do you think that is a legitimate subject for comment by prisoners?

A. I think it becomes a real problem when a man has indicated himself that he has an alcohol problem -- and that evidence is in the fact that he committed himself for treatment to Waterbury, and he also spent some time, I believe, at Renaissance House in... I think it is Proctorsville.

Q. Is that in Vermont?

A. Yes.

Q. Are you referring to Captain Toomey?

A. I am referring to Chief of Security, Toomey, who indicated he had an alcohol problem and committed himself for treatment.

Q. Did he indicate this to you, personally?

A. No, this was reported to me by Deputy Commissioner Hogan and Mr. Moeykens.

Q. How long ago was this?

A. I am not sure.

Q. How long ago did he commit himself, do you recall?

A. I don't remember. It was this year... I am not even sure about that.

Q. Can you place it in terms of when this issue came out -- before or after January?

A. No, I can't.

Q. I ask you, again, whether you would be willing to make that information available to us?

A. No, I wouldn't.

(Off the record discussion)

Q. Do you see any problems with having a Chief of Security at a prison who has this type of problem?

A. I think an employee who has alcohol problems anywhere can cause trouble. I think the important issue is whether that individual attempts to do anything about it.

Q. In the prison context where it is very important that the uniformed personnel or the people who run the facility

have the respect of the prisoners, doesn't this create a special problem that might not be so important in other contexts?

A. I don't know that that is necessarily the case. You are asking me to speak from a correctional standpoint now, and I think there are couple factors involved. One is whether the person drinks on the job and his performance is directly hurt by that. I had no knowledge of anything like that ever occurring. The other is, again, whether an individual is attempting to do anything about that. I would object if there had been an article here which identified an inmate as being beyond hope.

Q. What I am getting at is, we have been talking a lot this afternoon about respect for the people who run the facility. I am suggesting that with reference to this cartoon, that the problem is not created by the prisoners, but by the fact the Chief of Security has this problem?

A. I would suggest if there is a problem associated with that, it is created by calling this kind of attention to not only the prisoners but everybody else who might read this particular issue.

Q. Did you personally distribute any issues of this particular issue of The Luparar to anyone?

A. I am not sure whether I gave a copy to the governor's office or not.

Q. Who would this have been referred to?

A. Either the governor himself or Mr. Jamele, who is the Secretary of Civil and Military Affairs. He has the responsibility for coordination with the Corrections Department.

Mr. Kohn: We have no further questions.

Mr. Bristow: We have no questions.

Deposition closed at 3:20 p.m.

I have carefully read the foregoing deposition and the answers made by me are true.

_____

Kent Stoneman

STATE OF VERMONT

COUNTY OF_____

At_____in said County this___day of August, 1973 personally appeared the above-named KENT STONEMAN and made oath that the foregoing answers, subscribed by him, are true.

Before me,

_____

Notary Public

CERTIFICATE

I, Christine A. Bodette, Notary Public and Court Reporter, hereby certify that the foregoing pages, numbered 4 through 55, inclusive, are a verbatim transcription of my verbatim stenographic notes of the deposition of KENT STONEMAN taken before me as Notary Public on Tuesday, June 26, 1973 at 1:30 p.m. at the Department of Corrections, Montpelier, Vermont and transcribed under my direction for use in the trial of THE LUPARAR et al v. R. KENT STONEMAN et al now pending in United States District Court for the District of Vermont.

COURT REPORTERS ASSOCIATES

By: s/Christine A. Bodette

109 South Winooski Avenue
Burlington, Vermont 05401
August 20, 1973
a

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF VERMONT

THE LUPARAR, JOHN SHUTTLE, EDITOR OF LUPARAR, CRAIG MURRAY, Individually and on behalf of all others similarly situated,	)	
Plaintiffs,	)	
v.	)	CIVIL ACTION FILE NO. 73-95
R. KENT STONEMAN, Individually and as Commissioner of the Department of Corrections of the State of Vermont; MICHAEL MOEYKENS, Individually and as Acting Warden of the Vermont State Prison at Windsor, Vermont	)	
Defendants.	)	

MOTION TO DISMISS AND/OR
FOR SUMMARY JUDGMENT

Now come Defendants and move to dismiss Plaintiffs' complaint or alternatively move for summary judgment in accordance with the Memorandum annexed hereto.

Dated at Montpelier, County of Washington, State of Vermont, this 10th day of May, 1974.

KIMBERLY B. CHENEY
Attorney General
State of Vermont

By:
/s/ Alan W. Cook
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Attorney for Defendants

UNITED STATES DISTRICT COURT
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Defendants.	)	

MEMORANDUM IN SUPPORT OF MOTION TO DISMISS OR,
IN THE ALTERNATIVE, MOTION FOR SUMMARY JUDGMENT

INTRODUCTION

The Defendants maintain that this action is one that is improperly brought under §§ 1983 of the Civil Rights Act. After the taking of depositions, exploration of analagous law, and a thorough review of Department of Corrections policies, the Defendants argue that this action fails to raise any constitutional question over which this Court should assume jurisdiction. Therefore, as indicated in Defendants' answer the complaint should be dismissed for failure to state a cause of action pursuant to Rule 12(b)(6) of Federal Rules of

Civil Procedure. In the alternative, and in the event that this Court determines that there exist the proper elements to assume jurisdiction, the Defendants ask the Court to consider this Motion as one for summary judgment pursuant to Rule 56 of the Federal Rules of Civil Procedure.

STATEMENT OF THE FACTS

In November of 1971, without the assistance of either attorneys or journalists, a set of guidelines were finally produced for directing the operation of a prisoner newspaper at Vermont State Prison, Windsor. Under those guidelines, the prison administration agreed to finance the paper and provide facilities for its printing--a not insubstantial financial undertaking. In conjunction with that promise by prison officials a number of guidelines concerning content of the publication were outlined.

The important elements of those guidelines were:

a. All articles were to be approved by the editorial staff. It was the understanding of the prison administration that the editorial staff would include both inmates and prison administrators or officers.

b. Editorials were to attack issues and not personalities.

c. No inflammatory articles were to be published.

Included in the guidelines was a statement of the type of articles that were going to be published. That statement indicated that "/t/he publication wi[illegible]h such/as-program schedule-movie schedules; progress [illegible]ort on programs, - basically items of interest to all concerned with corrections". With these guidelines in force, The Luparar became a working paper at the prison.

The paper was published in accordance with the guidelines without incident until October of 1972 when a new editor took charge of the newspaper. The previous editor, inmate James Clothey, had substantially reaffirmed his belief in the guidelines in July, 1972 for reasons of financial support if not otherwise. At that time he indicated that the paper would "present opinions on issues, not personalities" and "before publication it (The Luparar) will be reviewed by at least two representatives to the paper from the administration". At least to that time, the basic elements of the November, 1971, guidelines were accepted by the prisoners.

Beginning with the October, 1972, issues there was a change in the editor of The Luparar (Mr. Clothey escaped). Inmate John Shuttle became editor, and a decided shift in direction of the paper was noticed by the administration. In increasing amounts and frequency, The Luparar began attacking

personalities and publishing potentially libelous and highly inflammatory articles. The administrators of the prison met informally with the inmates to try to avoid any future extensions of writing in these areas that were outside the guidelines for the paper. These informal meetings were ineffective, and the violations of the guidelines reached a critical point in the January, 1973, issue of the paper.

The January issue of The Luparar was brought to the attention of the Commissioner of Corrections, R. Kent Stoneman, by the Warden at the prison, Julius V. Moeykens. Mr. Moeykens sent Mr. Stoneman a copy of The Luparar which Mr. Stoneman read. After reading articles that implied that the State's Attorney for Chittenden County was a homosexual, that inmates needed "to choke the truth" out of the Director of Education, that the Warden was a "psychopath", and a cartoon which displayed the Chief Security Officer as a hopeless alcoholic, the Commissioner decided to prevent distribution of the January issue. (Annex "A") This activity took place on Friday, January 5.

That same Friday a written statement was provided to the staff of the paper indicating that the material violated the November, 1971, guidelines. The focus of the violation was that "this issue is far from the guidelines relating to issues

and not personalities". After that meeting, the distribution of the January issue was halted, and the staff of The Luparar was informed that no further issues of the paper with prison assistance would be allowed, and the January issue would not be distributed until the guidelines were met or new guidelines were formulated. (Annex "B").

The following Monday, January 8, 1973, the Warden again met with the inmate staff of The Luparar. At that meeting, he reaffirmed his position from the Friday afternoon meeting and told the inmates which articles were objectionable. He then informed the inmates that the newspaper, as presently constituted, was considered contraband and would be confiscated. Further, no other issues of The Luparar would be mailed. The prisoners informed the Warden that they would not have a paper if it was subject to any censorship and that the staff would take the Department of Corrections to Court. Since that time the inmates have refused to negotiate on any new guidelines, even though the Department has offered a new set of clearer guidelines, and no further issues of The Luparar have been published 1/. (Annex "C").

1/ There is real doubt as to whether any interest in publishing a newspaper at the prison remains. Since the confrontation in January, 1973, there have been no overtures from inmates in that direction.

ARGUMENT

I

THE DEFENDANTS ARE UNDER NO OBLIGATION TO PROVIDE PLAINTIFF INMATES WITH A STATE SUBSIDIZED PRISON NEWSPAPER AND MAY IMPOSE CONDITIONS ON THE PUBLISHING OF SUCH WITHIN THE CONFINES OF THE PRISON.

The Defendants maintain that they are under no affirmative obligation to provide inmates with a subsidized prison newspaper. The Department of Corrections, operating through the Defendants in this case, provides the Plaintiffs with several means of expression and communication with the general public. The Plaintiffs are free to correspond with anyone they please, including newspapers, and are free to have that correspondence published. They are also free to write manuscripts for publication and to seek independent publishers for their works. Finally, they are able to receive letters and published materials from outside sources within broadly drawn guidelines (Annex "D") Therefore, the Plaintiffs possess ample opportunity to utilize any guaranteed right of expression (or other First Amendment right) they feel they have. Through the utilization of these modes of expression, those Plaintiffs who feel they possess a "right" to hear news from the prison are fully capable of doing so.

Having provided adequate means of expression, the Depart-

ment of Corrections maintains that there is no affirmative duty to make a state subsidized prisoner-run newspaper available. Two similar areas of jurisprudence involving prisoners' rights support Defendants' position that this administratively costly method of expression Plaintiffs demand is not one that is guaranteed to them. The first is the area of religious freedom, which has been gaining increasing acceptance by the courts as an area of inmate protected rights.

> "The requirement that a state interpose no unreasonable barriers to the free exercise of an inmate's religion cannot be equated with the suggestion that the state has an affirmative duty to provide, furnish, or supply every inmate with a clergyman or religious service of his choice." (Gittlemacker v. Prasse, 428 F.2d 1 at 4 (3d Cir. 1970)).

The Third Circuit has recognized that the protected right of religious expression fails to demand an affirmative obligation of the State to provide inmates with all and any means of expression.

Secondly, the courts have reached that same conclusion when speaking of the right to counsel.

> "By offering to appoint counsel the government has fully satisfied the requirement. . .that prisoners may not be denied effective access to the courts. Neither the government nor the respondent is required to allow prisoners to pick and choose the means of access most convenient to them, irrespective of the burden this places on prison administration, expense, and discipline. Lee v. Stynchcombe, 347 F. Supp. 1076 at 1080 (N.D. Ga. 1972).

The areas of the right of access to the courts and the freedom of religious expression have well founded constitutional protections. However, such protections in the prison context fail to demand that the State provide prisoners all possible means of employing those rights. In the area of freedom of expression, the Defendants maintain that the same is equally true.

Having provided several effective means of both receiving and expressing inmate views, the Defendants believe they are under no constitutional obligation to fund and support a prison newspaper.

Where, as in this case, the administration agrees to give support to an inmate newspaper, it may be subject to reasonable conditions. The prison administrator is the one who controls whether a newspaper may be published and makes available the specific resources necessary to make the publication possible. Working as an agent of the State, he is no restrained from placing controls over the content of what is published in the paper. By strong analogy, the Defendants maintain that their authority to impose conditions for the publishing of The Luparar are legitimate exercises of State power.

The United States Supreme Court has had occasion to consider the restraints placed by the Federal Communication

Commission on broadcasters over assigned frequencies. The Commission made it a condition in the assignment of frequencies (a state controlled function similar to providing funds for a newspaper) that in the event personal attacks or political editorials are made, free reply time will be made available. Broadcasters have tried to maintain that once the frequency was assigned, they had the right to use their allotted frequencies to broadcast whatever they chose. (The similarity with the Plaintiffs' contention that they be free to distribute the January issue without any prior restraint once the privilege to print has been given is striking.) The court rejected that claim and upheld the right of the government to deny a station a license because it violated the F.C.C. standards. In so doing, it explicitly maintained that denying a license for those reasons was not a denial of free speech. Red Lion Broadcasting Co., Inc. v. Federal Communications Commission, 395 U.S. 367 (1969).

The status of private newspapers in controlling their content also provides considerable illumination in this area. The publishers of newspapers have the power to control article content, editorial comments, and advertising that appear in their papers. The area of that discretion that has gained the most intense attention is the control of advertising by papers.

In a case where the Chicago Tribune rejected a paid editorial because its contents ran contrary to the paper's interest, the Seventh Circuit maintained that "/W/e glean nothing (that maintains that) advertising pages may be pressed into service against the publisher's will". Chicago Joint Board, Amalgamated Clothing Workers of America v. Chicago Tribune Company, 455 F.2d 470 at 478 (7th Cir. 1970).2/

Where the State provides the funds and facilities for publishing a paper, it should not be required to have the pages of the paper "pressed into service against" its "will" either. Content regulation by those controlling the means of production of communication facilities is as clearly recognized as a legitimate exercise of authority. State officials who permit the publishing of a prison newspaper on state equipment with state funds should legitimately have that same authority.

In the only case the Defendants could find that specifically dealt with the question of censorship of a prison newspaper,

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2/ See also, Mid-West Elec. Coop. v. West Texas Chamber of Commerce, 369 S.W. 2d 842 at 843 where they maintain that:

> "The publishers of newspapers or magazines are generally under no obligation to accept advertising from any and all who apply for its publication, but are free to deal or decline to contract with whom they please." (Cit. omitted).

the District Court maintained:

> "The determination of which prisoner-penned articles will be circulated throughout the prison population via an inmate periodical is clearly a matter of prison administration with the discretion of state authorities." Jones v. Rouse, 341 F. Supp. 1292, 1294 (M.D. Fla. 1972).

That "discretion" of state authorities is exactly what was exercised when the November, 1971, guidelines were instituted and later enforced.

The Department of Corrections exercised its authority by meeting with the inmates and laying down the guidelines under which The Luparar was to be published. The Department understood that no personalities were to be attacked, 3/ no inflammatory articles were to be published, and that the newspaper was to concentrate on issues of concern to both inmates and staff of the institution. The defendants, with the publishing of the January issue, honestly believed that the spirit and the letter of the agreement under which The Luparar was published had been violated. For that reason, as many of the offensive copies as possible were retrieved.

The issue before the Court is whether the state acted

3/ See, Note, "The Right of Expression in Prison", 40 S. Cal. L. Rev. 407 at 420 (1967). Speaking of manuscript writing the author notes that. . ."/c/ertainly some prison regulation of manuscript writing is necessary. Thus the state should not provide the facilities for a prisoner to create obscene or libelous works."

within its area of recognized authority. That question is one of interpretation of the relationship between the Department of Corrections, in exercising its wide discretion, and the staff of The Luparar, as inmates seeking to use the prison printing facilities and state funds. The interpretation of that relationship is not a question that is appropriate for this Court to consider. At most, the question is one of determining whether or not the Defendants were correct in deciding that the November, 1971, guidelines were violated by the January issue. The determination of that question is certainly not within the range of constitutional questions that § 1983 of the Civil Rights was meant to face. Therefore, the proper course of this Court is to not assume jurisdiction and dismiss this claim for failing to state a cause of action for which the federal courts can grant relief pursuant to 12(b)(6) of the Federal Rules of Civil Procedure.

II

ASSUMING, ARGUENDO, THAT THE PLAINTIFFS' CLAIM CONSTITUTES A CAUSE OF ACTION, IT MUST BE FOR ONE OF THREE REASONS: a) THE STATE IS PROHIBITED FROM PLACING PRIOR RESTRAINT ON THE PRINTING OF THE LUPARAR; b) THE RESTRAINTS PLACED BY THE DEFENDANTS WERE UNCONSTITUTIONAL OR; c) THE DEFENDANTS FAILED TO AFFORD DUE PROCESS WHEN IT WITHHELD THE JANUARY ISSUE OF THE LUPARAR FROM CIRCULATION.

A. THE STATE IS NOT PROHIBITED FROM PLACING PRIOR RESTRAINTS ON THE PRINTING OF THE LUPARAR.

In section III, paragraph 8 of Plaintiffs' Statement of Claim, they maintain that the actions of the "Department of Corrections in suppressing the January issue. . .constitutes a prior restraint in violation of the First Amendment. . . ." Unfortunately, this position. . .is founded upon a claim of absolute privilege against prior restraint under the First Amendment--a claim without sanction in our cases. Time Film Corp. v. City of Chicago, 365 U.S. 43 at 49 (1960).

Situations where the courts have justified prior restraint exist both within and without the prison environment. For example, the Supreme Court has permitted prior restraint in the case of movies, (Time Film Corp, supra, and its progeny); obscenity (Bantam Books, Inc. v. Sullivan, 372 U.S. 18 (1962); and picketing (Shuttlesworth v. City of Birmingham, 394 U.S. 147 (1969)). Needless to say, prior restraint has long played a part in the consideration of First Amendment rights.

In the prison environment, an even higher level of prior restraint on free speech actions has been permitted by the courts. At the core of this greater restriction are the justifications outlined for prior restraint by the Supreme Court:

> "This Court has held that when 'speech' and 'nonspeech' elements are combined in the same course of conduct, a sufficiently important government interest in regulating

nonspeech element can justify incidental limitations on First Amendment freedoms." United States v. O'Brien, 391 U.S. 367 at 376-77 (1968).

Lawful incarceration of prisoners has long been a "sufficiently important government interest" to warrant a curtailment of rights. As the oft-quoted words of Price v. Johnston maintain, "/1/awful incarceration brings about the necessary withdrawal or limitation of many privileges and acts, a retraction justified by the considerations underlying our penal system" 334 U.S. 266 at 285 (1948).

In many instances the courts have realized that limitations on First Amendment rights are compelled by incarceration. Three specific areas involving inmate writing are important to examine to determine the present limits of prior restraint and possible censorship or confiscation of written inmate material:

A. Manuscript Writing: The courts have allowed both prior restraint and policies which forbid the sending of manuscripts by prisoners outside prison walls.4/ In these cases, the prison administrators had the authority to be told the nature of the material being written, the submission

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4/ Defendants are not, however, attempting herein to litigate the issue of free access to the mails, and submission of manuscripts to the media without censorship. The issue herein is limited to state subsidized publications and their dissemination.

of the material for review, and to forbid sending manuscripts without first meeting all administrative policy guidelines. The most recent case dealing with this particular question was decided in the Second Circuit, and it affirmed a lower court ruling which permitted the setting of strong administrative guidelines for both the writing and publishing of prison manuscript. Berrigan v. Norton, 332 F. Supp. 46 (1971) aff'd 451 F.2d 790 (2d Cir., 1971); see also Maas v. United States, 371 F.2d 348 (D.C. Cir., 1966).

B. Mail regulations: The regulation of the mail between prisoners and persons outside the prison has long been subject to prior restraint and censorship. In the Second Circuit, it is even permissable to read and withhold attorney-client mail if a high level of governmental interest is met. Wilkinson v. Skinner, 462 F.2d 670 (2d Cir., 1972); Sostre v. McGinnis, 442 F.2d 178 (2d Cir., 1971).

C. Distribution of prisoner-written material within the prison itself: As already pointed out, the courts have held that prison administrators may freely censor prison newspapers. Jones v. Rouse, supra, 341 F. Supp. 1292 (M.D. Fla. 1972). There is also strong dicta to indicate that prison administrators may confiscate the political writing of any prisoner if the need exists. Sostre v. McGinnis, supra, at 202:

"Whatever doubts we might have to the wisdom of seizing an inmate's political writings, we would not lightly overturn a warden's judgment that possession of the writings might subvert prison discipline <u>if there existed the risk of their circulation among other prisoners</u>." (Emphasis added.)

The Defendants submit that the analogies and cases on point are too strong to ignore. The courts in these cases, which all deal with prisoner writing, have allowed confiscation, censorship, and deletion. <u>The Luparar</u> question rests on exactly the same grounds as these previous decisions. The Defendants therefore argue that prior restraint may be placed on the writing in a prison newspaper, especially where, as here, that newspaper is state supported.

B. THE RESTRAINTS PLACED BY THE DEFENDANTS WERE NOT UNCONSTITUTIONAL.

The Plaintiffs, by implication, make such a claim in paragraphs 10 and 12 of their Statement of Claim. In paragraph 10 they maintain that the restriction on attacks of personalities is unconstitutional. Paragraph 12 maintains that a rule that the newspaper must attack issues and not personalities is vague and overbroad. Underlying both of these assumptions is that the State is limited in what restrictions it may place on the paper and that the Defendants went beyond those limits by not allowing the January issue to be distributed.

The District Court in New Hampshire recently faced the question of what standards could be used in censoring written material from outside the prison walls. In deciding that case, the court outlined a most illuminating set of guidelines:

> "Censorship or exclusion of certain reading materials is justified upon a finding of a clear and present danger to prison morale, morality, discipline or security. Defendants may also take reasonable steps to prevent receipt of obscene materials, or substantially inflammatory reading matter which pose an imminent threat to jail security. In these matters, the expert opinions of prison officials are entitled to great weight and respect by the courts." Leaman v. Hancock, 351 F. Supp. 1265 at 1268 (D.N.H. 1972).

Applying these guidelines to the agreement outlined in November, 1971, the Department's standards are clearly constitutional. As to attacks on personalities, the Commissioner determined that those attacks may create an inflammatory situation in the prison (by decreasing respect for prison administrators) and thus creating a security and discipline risk; decreases the morale of the administrators and custodians; and potentially libelous attacks constituted a threat to the moral position of the Department (who is financing the paper) as well as the position of the prison. The "expert" opinion of the Commissioner in these matters is neither unreasonable nor arbitrary. The Defendants would therefore maintain that the position of the Department in prohibiting attacks on personali-

ties is well within constitutional guidelines.

Parenthetically, it should be noted that the Department had an additional obligation to insure that the State did not incur liability for fostering defamation of third parties by inmates. In a defamation action, it would be difficult indeed for the state to defend against third parties who could prove that it recklessly ignored and even subsidized/officially an sanctioned publication it knew to be libelous. As Mr. Moeykens' deposition testimony indicates, at least one prominent public official was incensed enough to suggest a law suit. Deposition of Moeykens, page 41. Moreover, no responsible newspaper in the private sector would publish the kind of material found in the January issue of The Luparar. If it did, it would be hard put to avoid liability. See for example Michlin v. Roberts and the Times Argus, ____ Vt. ____ (1974).

As to the question of whether the standards for The Luparar were unconstitutionally vague, several remarks are appropriate. That claim demands that the standards for The Luparar must fall within some constitutional guidelines. That proposition is without support. Newspapers, in rejecting advertising, are not bound to follow standards that conform to some mythical constitutional standard. Those "vagueness" questions which have faced the Supreme Court have all dealt with criminal

statutes that may deprive a person of liberty. They simply do not apply to this.

As well, it must be realized that the standards were not drawn by either lawyers or journalists but rather by newspaper neophytes. They may lack absolute precision but were clear enough to be operationally effective. The Luparar was able to function for nearly a year under the standards promulgated with both sides understanding what was meant by "attacks on personalities". Second, the Department has been more than willing to clarify or modify those standards to make them more effective. For the Plaintiffs to consistently refuse to meet to clarify those standards and then maintain that the standards are unconstitutional is incongruous. It appears that Plaintiffs desire to "have their cake and eat it too".

C. THE DEFENDANTS DID NOT FAIL TO AFFORD DUE PROCESS WHEN THEY WITHHELD THE JANUARY ISSUE OF THE LUPARAR FROM CIRCULATION.

In paragraph 9 of their Statement of Claim and paragraph 2 of the Prayer for Relief, Plaintiffs maintain that refusal to allow distribution of The Luparar outside the prison without a prior hearing violates due process of law. Paragraph 3 of the Prayer for Relief asks that no interference with future issues of The Luparar be allowed without due

process of law.

As an initial statement, these positions of the Plaintiffs are inconsistent with some of the other claims of the Plaintiffs outlined earlier. Both of these due process arguments imply that some type of prior restraint of the paper is proper (or why would due process even become a question). Earlier, (particularly in Statement of Claim, paragraphs 8 and 11, and Prayer for Relief, paragraphs 2 and 3) it was suggested that prior restraint (with or without due process) is simply inappropriate.

The due process claims of the Plaintiffs can be viewed as either "substantive" or "procedural" due process questions. If a "substantive", due process argument is what is involved, defendants respectfully maintain that this court is an inappropriate forum to decide that question.

In determining what "substantive" due process may be required, it is important to realize that the Commissioner of Corrections maintains the power to regulate the behavior and discipline of all inmates.6/ Having the power to regulate the

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6/ The specific authority comes from 28 V.S.A. § 102(c)(1)(5)(6) which authorizes the Commissioner to make regulations, to maintain discipline and control of correctional facilities, and to maintain security, safety and order at the correctional facilities. The power of final say over the distribution and publication of The Luparar are extensions of this power.

behavior of the prisoners, the "substantive" due process argument must center on the question of whether he abused that power.

The crux of the Plaintiffs' case then becomes a question of whether or not the Commissioner acted within the limits of his discretion. That question is not one for § 1983 determination--unless the Commissioner totally abuses his discretion.

> "/I/n the area of state prisons, 'the federal courts should refuse to interfere with internal state prison administration except in the most extreme cases involving a shocking deprivation of fundamental rights.'" Baldwin v. Smith, 446 F.2d 1043 at 1044 (2d Cir. 1971) (Cit. omitted).

Nothing in the Plaintiffs' Complaint justifies a belief that the Commissioner acted in such a manner as to justify this court assuming jurisdiction. "It is no legitimate function of the court to assume the existence of a genuine issue of fact when in truth none exists." Lockhart v. Hoenstine, 411 F.2d 455 at 459 (3d Cir. 1969). The deposition of the Commissioner surely dispells any believe that he operated "in such a manner as to constitute a clear abuse or caprice on the part of prison officials." Evans v. Mosely, 455 F.2d 1084 at 1086 (10th Cir. 1972) (Cit. omitted).

As to any "procedural" due process requirements the Defendants maintain that they have all been met. When the January issue was confiscated, the Plaintiffs were provided written

notice of the complaint, two meetings with the Warden to express their views, and an opportunity to eventually mail the January issue if the personality attacks were removed. They were even afforded the opportunity to have legal representation or another third party present during discussions and negotiations the administration was willing to convene immediately. Because the Plaintiffs did not believe prior restraint was appropriate is no justification for maintaining that due process was not met when the power of prior restraint was exercised. The Defendants have afforded the Plaintiffs all existing requirements of due process.

Relative to future issues of The Luparar, the Defendants have provided the Plaintiffs with a set of proposed new guidelines that even more effectively meet any due process requirements. These guidelines are based on an out-of-court settlement of a similar case in Washington, D.C. (See Annex "C"). All relief requested by the Plaintiffs concerning future issues of The Luparar has thus been met and that issue is therefore moot.

CONCLUSION

The Defendants have presented herein several arguments in support of both their Motion to Dismiss or the Motion for Summary Judgment. In summary, Defendants maintain that no

affirmative right exists for the printing of a state subsidized newspaper. With this in mind, the Defendants are free to place restrictions on the content of The Luparar. From this perspective, the complaint of the Plaintiffs is no more than a dispute over the application of the Defendants' restrictions. That type of dispute fails to constitute a cause of action for which relief can be granted by this court under § 1983. Therefore, the Complaint should be dismissed.

The court would, of course, be justified in assuming jurisdiction if it finds that prior restraint isn't appropriate in this case. However, appreciating the special needs of the prison environment[7/] of which this court is well aware, the Defendants maintain that prior restraint is clearly appropriate. The Defendants also maintain that the guidelines they relied upon were well within constitutional limits and were explicit enough for reasonable men, including inmates and administrators, to comprehend and follow. Defendants maintain that any due process requirement has been effectively met in connection with the January issue and is moot concerning any future issues.

7/ See for example this court's opinion in Shuttle v. Sweinger, ____ F. Supp. ____ (D. Vt. October 23, 1973) (Civil Action File No. 6582).

Thus, we believe that no constitutional question is presented for the court to consider and the complaint should be dismissed pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure. If the court feels it is necessary to search the depositions of the Defendants or other attached material, we should respectfully request that they consider this Motion as one for summary judgment. In no areas are there any material facts to be decided and thus Rule 56 is an appropriate vehicle for this court to dispose of this case.

KIMBERLY B. CHENEY
Attorney General
State of Vermont

By:
/s/ Alan W. Cook
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Attorney for Defendants

CERTIFICATE OF SERVICE

This is to certify that on the 10th day of May, 1974, I served a copy of the above Defendants' Motion to Dismiss and/or for Summary Judgment and Memorandum in Support of Motion to Dismiss or, in the Alternative, Motion for Summary Judgment with a copy of this Certificate appended thereto, on the plaintiffs in this matter, by mailing a true conformed copy thereof

in a sealed envelope, first-class postage prepaid to Richard Kohn, Esq., American Civil Liberties Union, State Street, Montpelier, Vermont 05602.

/s/ Alan W. Cook
ALAN W. COOK
Assistant Attorney General
Department of Corrections

Annex "A"

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF VERMONT

THE LUPARAR, JOHN SHUTTLE, EDITOR OF LUPARAR, CRAIG MURRAY, Individually and on behalf of all others similarly situated,	)	
Plaintiffs,	)	
v.	)	
R. KENT STONEMAN, Individually and as Commissioner of the Department of Corrections of the State of Vermont; MICHAEL MOEYKENS, Individually and as Acting Warden of the Vermont State Prison at Windsor, Vermont,	)	CIVIL ACTION FILE NO. 73-95
Defendants.	)	

AFFIDAVIT

COUNTY OF WASHINGTON)
) ss.
STATE OF VERMONT)

I, R. Kent Stoneman, am Commissioner of Corrections and a Defendant in this case.

I was Commissioner at all material times concerning this controversy. I hereby certify that the document annexed hereto entitled "The Luparar, Volume VI, January, No. 12" is a true copy of the Vermont State Correctional Facility inmate publication which I received and reviewed on January 5, 1973. As a result of this review, I directed that there be no further distribution of this publication until earlier publication guidelines were met or new guidelines established.

To aid the court in its consideration of this document, the following is a description by title or position of the individuals referred to therein:

page 2 Patrick Leahy--Chittenden County State's Attorney.

page 3 O.C. Tusler (Orlando C. Tusler)--Supervisor of Inmate Education, State Correctional Facility, Windsor, Vt.

page 4 Jerome Tomey (Jerome M. Toomey)--January 1973: Correctional Counselor Supervisor B, State Correctional Facility, Windsor, Vt.; Present: Correctional Counselor Supervisor B, Residential Treatment Center, R.R. 1, Box 177, Windsor, Vermont.

page 7 Self-explanatory.

page 12 Coxon (Thomas M. Coxon)--Chief of Treatment and Training, State Correctional Facility, Windsor, Vt.

page 12 Moeykens (Julius V. Moeykens)--Supervising Officer, State Correctional Facility, Windsor, Vt.

page 21-23 Basso (Richard Basso)--Social Worker, State Correctional Facility, Windsor, Vt.

" Naurcedo (Leo J. Nauceder)--Social Worker, State Correctional Facility, Windsor, Vt.

" Carr (John Carr)--Vocational Rehabilitation Counselor, State Correctional Facility, Windsor, Vermont, Resigned: 8/17/73.

" Youngman (William Youngman)--Chaplain, State Correctional Facility, Windsor, Vermont, Resigned: 7/4/73.

page 28 Sanborn (Richard E. Sanborn)--Correctional Counselor A, State Correctional Facility, Windsor, Vermont, Resigned: 10/13/73.

page 31-32 Deane C. Davis--former Governor of the State of Vermont.

page 33 Thomas M. Coxon--see above.
" William Youngman--see above.
" Thomas P. Salmon--present Governor.

page 34 By initials and rank designation, an apparent reference to the Chief Security Officer at State Correctional Facility, Windsor Vermont.

page 36 By initials and title designation, a reference to Supervising Officer Julius V. Moeykens, State Correctional Facility, Windsor, Vermont.

page 38 Hudson (Paul Hudson)--Windsor County State's Attorney.

Annex "D" attached to the Motion and Memorandum of my counsel is a true copy of the Department of Corrections' mail regulations in effect at the State Correctional Facility at the time of the incident involving the January 1973 issue of The Luparar.

Dated at Montpelier, County of Washington, State of Vermont, this 10th day of May, 1974.

Kent Stoneman

KENT STONEMAN

Subscribed and sworn to before me in said County this 10th day of May, 1974.

Harold Cook

NOTARY PUBLIC

The Lupang



Comments by;

Ray Rebideau

Chittenden County Prima Donna

Patrick Leahy, the Chittenden County State's Attorney must be recognized as the Prima Donna of the County. Mr. Leahy is well known through out the State as the great law enforcer.

In reality if this turkey was ever checked out real good by an out of State Psychiatrist , he may prove to have a few mental problems.

I don't say he is different from other little boys; but he sure has something against women.

It is a known fact that he allowed one of his fellow Jewel-Pigmens to run rampart throughout the State and rape and plunder at gun-point for Months with the blessing of Mr. Leahy. Finaly the Prima Donna followed the due process clause and took the animal off the streets.

The proof is avieble to any one who is interested in the information.

Anyone who is interested in committing the perfect crime ; contact Patrick Leahy.

All you have to do is steal a bundle , and then rat some body into the joint for Pat, and he will grant you imunity. What better way to commit the perfect crime?

Well good luck through-out the New Year Prima; all of the boys here at the prison wish you a lot of luck; as a matter of fact we hope you wind up right here with us.

****

ONLY COPY AVAILABLE

STAFF

EDITOR
John Shuttle

ASSOCIATE EDITOR
Louis Bowers

STAFF ARTIST
Jerry Williams

TECHNICAL ADVISER
William Mayer

REPORTER
Richard Cronin

CIRCULATION
Ludgar Benoit

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Published at Windsor, Vermont. Compiled and edited by inmates of the Vermont State Prison.

****

EDUCATION

by; Jack Shuttle

Since 1973 is just around the corner, O.C.Tusler ,Director of Education joined in with father time, grabbed a Scythe, and chased off all of the College programs. O.C. is in hopes of new programs for the New Year. Where he proposes to get the money bears watching ? Maybe he has his hand in the Cash Register, we noticed he has been friendly with the Contradtors . Now we fing , he is leaving on a 7-day cruise to the Bahamas. Maybe he has some information, we should choke out of him ? Some of the inmate s or starting to wonder if maybe the Director is not just another Yes man for the Staff .

It is highly supisoned O.C. may have been instrumental in having "Running Deer "# locked in the cage.

Fellows maybe this bird bears a little closer watching . He may be a wolf in Sheeps clothing. We will be on his case, with a through investigation very soon.

because the staff will stop them from doing an efficient job. Silly.

Lt/ Toomey by: Michael Marathon

Most of the Vermont Newspapers have dealt with the ethics involved in an appeal by Jerome Tomey, a Windsor State Prison Guard.

Toomeys appeal is based on the grounds of discrimination. He claims he passed the test which wpuld qualify hi m for promotion.

He was refused promotion because of a State policy ruling that a man cannot be placed in a postion where he would be under the direct supervision of his father, or a relative.

This should be a question for the Courts to decide, not the Labor Department.

I would like to raise the question of Toom[illegible] qualifications. The answer to the following questions are germain to these questions.

First, what type of test was given to him ? Does this test really meaure the qualifications of a man ? Would the test go something like this ?

1-Do you know how to check an Inmate for contrabrand by strip searching ?

ANSWER: First you take all of his clothes off and look up his ass.

2- How do you foil an Inmates who is asking for his rights ?

ANSWER: Call the hospital and ask that the nurse come down with a shot of Tranquilizer, and then you ge t twenty guards to help give it to him.

3- When is the best time to harras the Inmate ?

ANSWER: You must do this at all times , neverlet them have any rights.

4- When inmates complain about food that is rotten what action should be taken ?

ANSWER: Tell him too eat it or else, you take and and write disciplinary report for infraction of the rules.

5- How ca n you tell if there is going to be a riot ?

ANSWER: Before every shift, you tell all your guards to start anything that will make it hard on the inmates , no mateer what it is .

6-

Toomey claims his rejection was discriminatory. Is the kettle calling the pot black? Toom ey's whole attitude toward the inmate is discriminatory, for this reason I believe the an is not mentally or emotionally fit for t h e promotion he desires.



To all The People at the Zoo

Your Help and donations for Bear Pen Cleaning is appreciated

Happy New Year

The Luparar staff and the inmates here.

does I would like to be shown where it starts.

Country Music Corner
Starring Gail and her Country Gentlemen
by Louis Bowers

As she promised, beautiful Gail and De bie, her 16 year old sister, appeared on Dec. 17, in Vermont State Prison and though these two wonderful girls stole the Show, we cannot forget Jerry, Gail's husband, who really won the crowd on Lead Guitar. Cliff, did a fine job as did Bob.

Guest stars with Gail and the Country Gentlemen were - Tom Walker, a very talented singer from Windsor, Vt. This boy has a star in his future. Good luck Tom.

Bob Soprana gave us a good rendition of "The Auctioneer".

Ship Fordham sang several very good numbers and really was well liked by all.

Debbie last appeared here when she was 15. This girl really puts her heart into her music and we hope that the future for all these fine people is a bright one. We love you all.

Gail said any prison in the area within reasonable travelling distance that needed entertainment could have her Show free by contacting "Gail and the Country Gentlemen", c/o Top Hat, Ascutney. Vt.

God Bless You, Gail!

Answer to the two part article
printed by the Burlington Free Press and
reported by Michoal Donogue on
Dec. 5 & 6, 1972

The Burlington Free Press is owned and operated by Gannet Newspaper Co. and is intentsive circulation as a morning newspaper in the state of Vermont. This newspaper is confined to printing articles that are what the state of Vermont want the people of this State to believe, and has made this a practice for over 144 years of serving the Vermont public. Mr. Donoghue, a reporter for this paper has on many occasions written many articles on the Vermont State Prison, at Windsor. All of these articles that he has written have been completly dissassociated with what is really being done as far as the Correction Dept. is concerned. Mr. Donoghue has always written about what a fine man the Commisioner of Corrections R. Kent Stoneman is and what a good job he is doing in this State to have us as # 1 in the country. I can not see where anyone in their right mind can believe that when the present prison system is 163 years old, and is the oldest prison in the United States. The present conditions that we, as inmates, live under is the most implorable conditions known to man. Mr. Donoghue has never told the tax payer of Vermont about all the money that is never spent on programs that would help put the men that are realeased and come back into society and be productive, so that they would not be a repeater. Mr. Donoghue has not told the taxpayer of Vermont the real truth about all of the conditions that still are being practiced by the ward n Mr. J. Moeykens and also the commisioner of corrections. When ever an inmate has a visit from his loved ones or one of his f iends, he is made to take all his clothes off and have his body completly searched, going and coming to the visit, and if he refuses to do so , he is not allowed to see his visit, no matter how far the visit has traveled to see him.

Mr. Donoghue has stated that when Windsor State Prison was completed just prior to the end of Thomas Jeffersons term as cheif Exec. He also reported that it cost the taxpayer of Vermont $10,000 to build just after 1800, so Vermont has gotten a good return on its original investment. But he fails to say that the up-keep of the 163 year old prison is one of the highest in the United States, also that it costs the State of Vermont 12,500 dollars a year for every prisoner that is housed in Windsor.

Mr. Donoghue fails to say that to keep 120 inmates at Windsor State Prison, it costs the people of Vermont in excess of $14,000,000,00 a year. This figure does not include the salaries of nurses, officers, and warden. Now you get the totals of the guards you also have to keep in mind over time. Each guard works between 85 to 100 hours a week, so the total salaries comes to over $2,454,032,15 a year, and this figure fluctuates because sometimes they will work more hours.

Now, there are thirteen officers of sergeant or lieutenant and their salaries are from $8,000 to $10,000 a year. And that does not include overtime. There are also doctors and nurses salaries to be paid, $8,000 for nurses and $15,000 for doctors. Now they want the public to believe that it costs $12,500 to keep an inmate one year at Windsor State Prison, but I know that they never spent more than $8,000 a year so where is all of the rest of the money going? I feel that the taxpayer of Vermont has a right to know where the rest of this money is going. The money that is now being spent on A Block is a waste of more tax dollars that Vermonters have to pay. I feel that there should be a Grand Jury investigation made of the commissoner of corrections office, and the State Treasury office plus the warden, Mr. J. Moeykens. this man does not have the qualifications to run a prison, and it is well known that he is a psycopath, and we are exposed to him everyday of the year. So I say to you, Mr. Donoghue, if you want the real truth about Windsor prison, come here and talk with the men that live here under all of the conditions that are unhuman to any man.

A. Micheal Marathon

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M. Narcedo - better known to the Convicts as "[illegible]"

Introduction to Goethe

by Louis Bowers

We would like to introduce our readers to a part of "The Tragecy" "Night" - "Faust Study", written by Goethe. It was begun when he was in his early twenties and finished when he was fifty-one. Within the verse, one is introduced to the human conflict between conscience and love; to the union of passion and wisdom, as written by one of the master-poets of the world.

We cannot print it all in this issue, but if we receive opinions that it has been well-received, we will, in each issue of "The Luparar", continue The Verse until it is completed.

FAUST * - Philosophy have I digested,
The whole of Law and Medicine,
From each its secrets I have wrested,
Theology, alas, thrown in.
Poor fool, with all this sweated lore,
I stand no wiser than I was before.
For ten years now, without repose,
I've held my erudite recitals
And led my pupils by the nose
and round we go, on crooked ways or straight,
and well I know that ignorance is our fate,
and this I hate.
I have, I grant, outdistanced all the others,
Doctors, pedants, clergy and lay-brothers;
All plague of doubts and scruples I can quell,
And have no fear of devil or of hell,
And in return as destitute of pleasure,
Knowing that knowledge tricks us beyond measure,
That man's conversion is beyond my reach,
Knowing the emptiness of what I teach.
Meanwhile I live in penury,
No worldly honour falls me.
No dog would linger on like this,
And so I turn to the abyss
of necromancy, try if art
Can voice or power of spirits start,
To do me service and reveal
The things of Nature's secret seal,
And save me from the weary chance
of holding forth in ignorance

cont. . .

Then I shall see, with vision clear,
How Secret elements cohere,
And what the universe engirds,
And give up blustering with words.
O silver majesty of night,
Moon, look no more upon my plight,
You whom my eyes at midnight oft
Have gazed upon, when slow and soft
You crossed my papers and my books
With friendly, meloncholy looks.
Would that my soul could tranquil stray
On many a moonlit mountain way,
By cavenous haunts with ghostly shadows,
Or thread the silver of the meadows,
Released from learnings' smoky stew
to love me in the moonlit dew.
But, ah, this prison has my soul
Damnable, bricked in, cabined hole,
Where even the heaven's dear light must pass
Saddened through the painted glass
Hemmed in with stacks of books am I,
Where works the worm with dusty mange,
While to the vaulted roof on high
The smoky ranks of paper range;
Retorts and jars my crib encumber,
and crowded instruments and, worse,
Loads of hereditary lumber -
And this, ay this, is called my universe.

cont. next issue
at Readers' Request

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Article

The Luparar is the inmates newspaper at Vermont State Prison, Windsor Vermont. The Luparar staff is editor, John Shuttle, Exec. Secretary, Louis Bowers, Legal Editor, Bernard woodmansee, Reporter, Richard Cronin, Illustrator, Gerald Williams, Technical Advisor, William Mayer, Proof Reader, R. Nesto, Circulation, Ludger Beniot, and Typist William Fox. This is the January issue 1973. There have been many requests as to what the meaning of Luparar is, It was taken from the word Luperealia, (God of Flocks); an ancient Roman Festival to insure fertility for the people.

We have changed the wording to Luparer, and giving it our own meaning which is " To insure fairness and justice to inmates that are incarcerated in prisons, by whatever means we can." The only way we can help the inmate is by publishing what is really going on in prison. The picture of the wolf for the cover is to remind us of what we are being treated like, and imprisoned like, dogs, by big dogs.

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Interview with John Carr, director of Vocational Rehabilitation programs for inmates at the Vermont State Correctional Facility, By: Richard Cronin, Reporter.

There has been a lot of controversy as to just how much work the Dept. of Vocational Rehabilitation is doing for the inmates in this institution. Some suggest nothing, some suggest only a selected few are chosen to recieve benefits, some suggest Mr. Carr be relieved of his position.

My particular opinion based on my dealings with Voc. Rehab., working in the Education Dept. here and observing just what goes on educationaly is as follows. Vocational Re habilitation is just a big word which means nothing as far as I can see. In the three years I have been here I could count on my fingers the number of inmates that have recieved benifits while in this institution. Voc. Rehab. is now out of funds. They have allways been out of funds when it came to helping an inmate that was to be here for any length of time. There is no concistancy to t he way Voc. Rehab. operates, yet there are many consistantly brocken promises. For the inmate stuck in this garbage of a hole Voc. Rehab. means see you next month, or next year, I'm sorry, prove you can do it, when if you could do it you wouldn't need the course you asked for.

But, don't let what I say turn you off, you may be leaving here within six months and when you hit the Correctional Center broke and dissatisfied the same way you came in, you may be lucky enough to get the course you want. That is of course if you can last in the correctional center long enough.

1. How many people have been helped through Voc. Rehab. in the year you have worked here?
   (Carr)-- Depends on what you mean by helping. Up until recently we were not able to help any inmate financially unless they had less than six months left on their sentence. We help the inmate once he is in the Correctional Facility and try to set up the various programs needed for a particular man. Because of this policy the figure would be low. Roughly 15-20 men were helped since I've been here. People have been helped both financially and health wise, as long as it has something to do with their rehabilitation.
2. As you told me earlier your dept. is broke. Do you have any idea when you will recieve more financise?
   (Carr)--All funds have been cut completely we can do nothing for the future until we get some funds. We have been through periods without funds before and we will get through this period. As far as setting up programs, we cannot until we get the money.

   (I would like to say): It has been the policy of Voc. Rehab. in co-operation with the dept. of corr. that some of the Voc. Rehab. Programs be aimdd towards the men in the Corr. Ct. The Dept. of Corr. wants the main empheses on people who are on their way out. Mainly because we are so limited in funds we must spend what we have the most on the men getting out.
3. You feel them men getting out first need the help? Don't you feel that people doing a lot of time should be allowed educational courses, as some courses take years to earn a degree and they could work for this degree and be ready for a job once they leave?
   (Carr)-- Yes! But the problem again we do not have the money and the Dept. of Corr. does not want any in house programs. They want help and trainigg to be given to the men on their way out. Vocational programs in this institution is primarily done by this institution. Not Vocational Rehabilitation. Educational kinds of things, for as long as a man is held in this institution is done by the Dept. of Corr. not Voc. Rehab. Vocation training is not instituted in here.
4. Do you feel the Dept. of Corr. Educational program is adaquate?
   (Carr)--I would have to say the program could be improved upon, but the problem is money. I feel this program is helping, but any program can be improved upon including mine.
5. Do you feel the Dept. of Corr. should try to obtain more money to institue various programs at this facility?
   (Carr)-- What kinds of programs?
   College courses and training, ect.
   (Carr)-- I do not feel competant to anwser that.

6. Would it be possible to give (or get) the exact figures on how much money has been spent here for inmates by Voc. Rehab. and how many inmates have recieved benifits from Voc. Rehab. ?

(Carr)-- I do not know if this is possible. I would like to emphisise that you did not ask what other servises Voc. Rehab. offers besides finantioal. Counseling, which has its own value and need are a great role Voc. Rehab. offers assistance in.

7. You are talking about the counseling you do personally?

(Carr)-- Yes on counseling I do with men in here as well as the men on the street. All the men in corr. ct. recieve help also. I wouldn't say counseling is the most impottant thing, but counseling and helping to get a mand head straitened out is one of the most important jobs. If a man does not have his head together money will not help. Just saying things to people does not rehabilitate them.

Is there anything you wish to add?

(Carr)-- I would like to stress that one of the greatest needs in prison as far as rehabilitation is concerned for residents that need it, is the need for group psychotheropy and counseling. Frankly with all this XXXXXXXXXXXXXXX financial problem, it makes Voc. Rehab. look bad. It is a temporary problem and we will have money again in the near future.

AS RUMORS GO

by; JACK SHUTTLE

There seems to be a considerable amount of conflict these days in the front office. I wonder why ?

Could it be Ambition ? If you recall Cesar was ambitious and ~~thay~~ for that he was Slain. But then who of us are not ambitious ?

The confusion seems to be between our Warden, and the one who has great desires to be Warden, Mr . Coxon .

Seems that Mr. Coxon, had a couple of the big-wigs, fwom Montipieler to his home for Dinner. Of course this could only be Rumor. I am pretty sure if the mileage rating was checked out on his vehiclge , there would be quite a few trips to the Capitol racked up on the old meter.

Moykens was overheard by one of our spys ,to tell Coxon, that he Maykens if he did give up the plush political;plumb;would not hand it over to Coxon.

May be if the battle grows much fiercer, they will kill each other, and we will all be rescued.

Bets of one pack each is being taken on Coxon in the Recreation Hall. The inmates seem to think he is a little smarter and slicker than Moyekens, and will stab him when he is not looking. Of course everyone is entitled to his own opinion, . I will keep mine for the next issue.

Vermont
vs
The Constution

by; JACK SHUTTLE

Possibly because Vermont was the last State to ratify the Constitution, is one of the main causes it is so harsh on it.

Vermont in convention ratified it Jan.10 , 1791 ; and by act of Congress approved Feb. 19 , 1791 , was admitted into the Union as the 14th state , Mar. 4, 1791 .

From that day forward the State of Vermont, has violated every particle of the Constitution ; from The Original Seven Articles to the last Amendment.

Vermont may as well even declare the Preamble to the Constitution null and void ; it has no meaning in this State what so-ever. Justice here means excatly what you can pay for it. If you can only afford three (3) dollars worth of justice, or three (3) thousand that is what you get.

No money no justice.

Justice in Vermont for the nigger and poor whites or any other race for that matter, amounts to a bunch of mealy mouth Politicians running around mouthing off about law and order, conning the taxpayers into believing that if they will just elect the local Shyster, just close their eyes to the passing of a few more repressive laws, just shell out a few more bucks to buy the police bigger guns , louder radios and more mace , every thing will be wonderful .

Those are just lollipop laws, intended to pacify the suckers, to leave the impression that the adminstation is doing something , and perhaps to condition the public to the continued erosion of Constitutional Rights.

We already have preventive detention in the form of exorbitant bail; the no-knock law was nothing new,as any attorney can tell you . When they wished to gain entry, they just kicked the door down and come in , under the pretense their lifes were endangered or you were destroying evidence.

Of course we could not leave out such an important figure as the attorney general. He is probably the first attorney general in the United States to suggest, however obliquely, that the Constitution and Bill of Rights should be rolled up and hung next to the toilet.

The Defense Department and National Science Foundation can spend Billions of dollars to get a hand full of dust from the moon, or to study the SEX habits of a monkey, or to see if the testicles from an Elphant might fit on a mouse. But very little to control the organized crime or Mafia overlords of the Courts who collect for Justice.

In the last fisical year the Justice Department made grants of roughly $ 190,000,000 to local agencies , over half of that went to the police for fancier equipment, and bigger guns to kill a few more college students. About $ 12,000,000 of this went to upgrade the Court system. I imagine if it were really investigated; half of that could be found in some of their corrupt polticians silk lined pockets, are where he is paying rent for one of his paramours.

If you would just open your eyes and look a little closer, this whole Country is more of a Police State than Russia ever thought about being. Even worse back in the Colorado mine strike days when Rockfeller had his goons execute a bunch of innocent miners and their familys. The rich still control the whips and the guns. Vermont is well in front of the National pack. Of course they already have me ; so sucker you may be the next one on the list. Of course if you have money you do not have a worry in the world.

The only crime on earth is being broke. Justice is what you can pay for it .

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TO WHOM IT MAY CONCERN

by: JACK SHUTTLE

Recently I have had serval inquiries as to why more inmates are not activc in writing for the prison paper ?

The answer should b e very obvious . REPRISAL .

Any inmate WHO remonstrates against this adminstration, WILL be de alt with accordingly. NO: not openly but in the many sneaky underhanded ways, like bad reports to the Parole Board,classification board, consideration for any project or program which may benifit you directly. Requests will be stalled, denied, or completely ignored.

There are a million ways they get back at you. Why should many imates incure their wrath, when one or two can bear the load ??

Of course some material is complete ly discarded, we refuse to print in scenity.We are trying to raise our standards not lower them .

We deal strictly with the truth,and hard cold facts , regardless of who may be caught with his hand in the cash register . Many of us our in jail for a lot less, than what some of these people are getting away with. Many war criminals were put to death for similar crimes.

In or case we must write what we can to-day, as there may never be a tomorrow for many of us.

Any instant we do not feel some articles should be profitable to the adminstration; Why shoul d we cover up their deciet, trickery and lies ?

Of course there are a few dedicated officials, but to name them in this paper, could;and most likely would cause them to be dismissed, or placed in the gun towers, or outside the walls, where they never have contact with inmates.

All we can do is keep moving at the same snails pace honing to keep alive.

Or circulation is now up to over four hundred copies per month.

To our brothers inside the walls who are seperated from the family of man by an arbitrary and somewhat blind system of justice called law.

You live in a different world than us. A world that the people on the outside push out of their thoughts and try to forget. I am part of a group which is trying to find ways to not let them forget. In fact, to make them remember that men and women in prison have the same heart and shed the same tears as they do.

One way to do this is to put together a book of prisoner's writings; publish it and distribute it around the state with the hope that it will make people understand that prisoners are people that are forced to live without their freedom. Maybe then, they will question the system that imprisons men and strips them of their dignity in the name of justice; perhaps, through this questioning, they will see that hte system of justice and the penal institutions of this country are a miserable failure.

If you would like to see this idea become a reality, and have written anything; poetry, stories, letters, essays, that you would like to see published in a book and disributed to the citizens of this state, then send them to me. I'll get to work on putting them into book form. All material that I recieve will be returned as soon as possible. Any other help that you feel you would be able to give would be greatly appreciated; just get in touch.

Yours in Faith,

Jonathan Angel
R.F.D. #1
Whitingham, Vt., 05361

What Are The Facts

I speak strickly for myself as all articles should and all statements contained here are based upon letters to me and from reliable information at this institution or the Capitol. Then there is the News Med- which is supposedly reliable.

Back in November of this year, I personally filed the correct form to request a Holiday furlough as is granted by the Correctional Dep rtment. On Nov. 28,1972 I received a copy of the Teams recommendation and it stated," recommended by the Team subject to approval by the Federal Government which has a detainer lodged against me."

1. The Federal Government has no say as to what transpires during the time I am serving for the state.
2. No letters were ever written to the Government concerning their feelings about the furlough, by the Staff.
3. Mr J. Moeykens took it upon himself to remove my name from the recommended list that was sent to Mr. Stonemans office because of this detainer.
4. Mr. Charles Bristow, an Attorney for the Corrections Department, states,"A detainer is not or does not make one ineligible for either a parole or a furlough. Then we know this for there is a letter in effect to this on record from both the Government and Mr. Bristol. Plus men went home on furlough under the prevailing conditions. Then if this was the case, how come men are working outside with detainers on them?
5. Why do we have a Study Team to make recommendations to the Staff at an expense to the tax payer, IF THEY are over ruled by a mere Acting Warden, or is this another one of their White Washes.

Is the public better off with murderers, rapist and other crimes of violence than a person in for check Fraud or DWI? You be the judge...

Thenwhy does the State employ men that are continuiously arrested for DWI and continue their employee after three or four arrest; when many of us are here for that same offense; simulated Justice or Politics.

Why are employees allowed to pad their payrolls with overtime and not prosecuted; as was done up until recently.

I have asked these questions to Officals in position to answer and to no avail. So I now ask the public to find out why.

Of course all the convicts here in the slave company, of course

We do have many fine officers that work here, but their hands are tied because the Staff will stop them from doing an efficient job. Silly, no, very true, for I personally have a fine man for a Counselor and the Supervisor of the shop is another fine man.

As an individual, I like Father Youngman, but when he is a custodian rather than a Chaplain, I hesitate going to him; or when he sets on the Team as a member. Do we have trained personel as to the Staff. No! How many men that work here have had any training in penology. Maybe four or five.

When the Judge sentences us, the probation report states that we are either Alcoholics, drug addicts or another catagory. But do we get any rehabilitational program set up to fit our needs? No! We do get to serve our time regardless as to the final recommendation from the Parole Officer, Judge or even if I know what I need. Rehabilitation comes from the tools offered by the Institution. But if no tools are available, then I have to rely, as I have done, on my own resources to correct the problems. Luckily, I have a fine love, freinds and God to make all things possible for me, so that I never have to return to this or any other prison.

The legislature set up the 0-18,0-?in order to let men be released sooner if they are qualified. But the Corrections Department has made a flat policy to be used. That each man will serve 1/3 of his time regardless of whom it may be. So why is it necessary for us to have two or three screening Boards and spend 1,000,000 dollars a year for this purpose, if it doesn't function?

What good are laws regarding rehabilitation, if they are not adhered to.

It is like I told the Judge in November, that I get out next summer regardless as to what goes on here, but this may help in some small way to bring the facts to the public that foots the bills.

I will be fair. Some recent changes are good for a select few. Some of the extra work done for individuals to get home on furlough was a great stride, but why limit it or stop so soon? Why be prejudice and show part good will, extend it to the deserving. Why only the boys that live in a certain ?two areas be considered for privilages?

A prime example of wasted money and inmates time.

In the print shop there are 8-10 men assigned to work there. Now work is very scarce and the inmates sit around and drink coffee, I know for I work there. For the past few weeks the supervisors are working overtime to print what they call a special job. This special job has been done by inmates in the past. But now two and three men work 3-4 hours a night doing it.

Oh, the special job is printing the license plate stickers that paste or stick on to the metal plates. Why don't they supervise the help assigned to them rather than pay for the extra time?

We have a complete and full print shop, or nearly so. We have a nice dark room for developing the negatives for the two offset printing presses. This in itself is a good paying trade, but inmates aren't allowed to enter, much less to learn the trade in the dark room. As far as that goes, the Assistant foreman has never been shown how to do this and he has charge of the offset. Does it make sense?

Then there is the stripping table which in a plant in the free world is a good paying job, but inmates are not allowed to do this either.

I can do any of them and have done it in the free world to make a living. I am not concerned with myself, I am concerned for those that are without a trade and that need to learn.

This isn't to harrass the print-shop, but to state a fact of waste and don't careism. I enjoy the printing trade and the job I have, but that is no reason younger men can't be taught trades while working; nor is it a reason for employees to work overtime when inmates can do just as good during the regular work day.

This is the only shop that has adequate machines to teach a trade on in the whole institution. The above was a Staff decision, not the supervisors, for they are willing to do so, I think.

When a man capable of learning, has worked in this shop for six months he should be able to take the copy and do all that is needed to complete the job; and would if properly run...

Consistancy or equality does not exist here at Windsor Prison! If it does I would like to be shown where it starts.

Examples:

1. One man had an offer to get free records from a Disk Jockey, providing the staff would consent, from an employee. Request denied for this. But, on the other hand it is permissable for one of the Staff bring in a colored TV to another inmate as a gift.

2. How about the employees that requested permission to bring in cookies and fudge for the inmates and denied, because if these officers had to write out a displinary report it might have an adverse motive etc.

3. I was in court November 29,1972 for a modification of sentence and the Judge asked me after all these months why I was in Court with a 0-18 month sentence. For what reason or reasons was I denied a parole or what? I answered that once we reach the Institution, we are sure of one thing and that is our time. I then explained to him that we are not given anything as to when we are eligible for parole or a release. That I had then been here almost five (5) months and had not been informed as to the date. While in court I showed the judge the Team recommendation for furlough. Then the day after I returned from court, I sent him a copy of the denial because of a detainer.

4. Then I want to know why a man released on parole and violated for drinking is any worse then an employee coming to work either intoxicated or smelling like a brewery?

5. Then I want to know why my record shows arrest and sentences that have never taken place. But I guess that the court will answer me many questions that 21,000 dollar a year men are incapable of doing.

I have served over twenty years in Federal and State institutions in the last twenty three years and this is undoubtedly the most corrupt and inconsistant one.

If all the monies spent for investigations were to be spent in reality for Corrections, instead of .....,it would be a decent place.

I personally could open a lot of eyes if the public or the Grand Jury would ask.

THE DESTRUCTION OF WINDSOR

by Editor John Shuttle

The good old gullible tax payers are led once more like lambs to the lions' den. Still they think they were invited to watch T.V. If they drop in to a few politicians' houses, they can see colored T.V. that more than likely some of their hard earned dollars payed for.

Of course only a measely 285,000 is being sunk into the joint, which the politicians try to lead every-one to believe will soon be closed. The money is being sunk into more concrete and steel, not one penny is going to the filthy rat infested cesspool of a hole to make living conditions better for the convicts, or one vocational trade, or educational program.

Still more than one-half of the institution lay confined in their cells at least twenty hours a day. I should say dungeons, not cells; even those who have so-called jobs work only when the bosses feel like working, or when they show up for work.

The dbate is over on the new drug program; the town of Windsor is getting it whether it wants it or not. The farm is being remodelled. If they cannot supervise this place, how in the hell do they expect them to run a drug program?

I am sure if the contractors were all checked out real good, they would be found to have a few political connections. I am sure it would smell of political overtones.

The State claims they are broke; nothing for Educational of Vocational programs.

Here is a suggestion . . .

. . . For the savings of over 40,000 a year. Get rid of Basso, Naurcedo, Carr and Youngman. If ever there was a waste of money this is the best four living examples I can find. John Carr is supposed to be the Vocational Rehabilitation Man, if he is, it is only a fancy name. He does nothing for no one except himself - the nice fat check every week. If there is no money, who in the hell needs him? He says for counseling. Maybe that is a good idea; if we could find out how in the hell those four got on a State payroll, we could sure use some of the money. Now Mr. Youngman is alleged to be a man of the Lord. Well that is very debatable. Even in hell, a Priest or Rev. or Minister or any one cloaked in the cloth of Christ, will get a little respect. Well take a vote on this bird. You will find that when the count goes down, the old sheep has strayed from the fold. Or the black sheep - more like the devil only cloaked in the cloth of the Lord.

Judas betrayed Christ for 30 pieces of silver. Youngman will betray the convict for a hell of a lot less. If he ever makes it to heaven, it will have to be on the Republican ticket, not on the merits of any good deeds he has performed for the convicts, his fellow men.

Mr. Basso started off as an Art instructor, of which he was a big failure. The only thing he is really good at drawing is his big fat check every week. He now holds the title as a Social Worker or Counselor. He cannot help himself, how in the hell can he help a Convict? No one in their right mind would trust him as far as they could heave B-Block. This man actually hates a Convict. So he is fooling no one but himself. He is the one in dire need of Counselling and by a Looney Doctor from Waterbury.

Mr. Narucedo , better known to the Convicts as "Jumbo". Not that he has the mentality of an Elephant, as an Elephant never forgets. Naurcelo never remembers. He never has a thought of his own. He is a yes man for any one. I imagine some one drives him to work every day and picks him up at night. He could never figure all of this out on his own. The only thing he is capable of doing is getting that check cashed, and tucked away. He knows a good thing like this cannot last forever.

I imagine they are all wondering if the new Governor Elect is going to be goofy erough to keep writing that check. I am sure Youngman is praying for the whole mob.. . mostly himself. That's just his way.

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LEGAL EDITOR: THE STATE'S ATTORNEY

In the State of Vermont, we have a unique system of arrest. The State's Attorney for the County issues an Information and Warrant, which the Judge signs soley upon the Attorney's determination of probable cause. You, the citizen, can be arrested and within two hours be inside the Vermont State Prison for safekeeping while awaiting trial.

An example: On the 14th of this month, the State's Attorney had two men arrested for holding up a drugstore in Bennington. The two were brought to prison, and today, the 15th, they were released. The State's Attorney had the wrong men ! What kind of justice do you call that ? The poor guys were in shock, they couldn't understand what had happened. They were lucky that the mistake was discovered, but not until they had proven their innocence. In many cases it is a long and weary road to prove this. I believe that the citizens of this state should insist on their Fourth Amendment right; that is to be free from arrest except upon probable cause, as determined by a neutral and detached Magistrate. As it stands now though, the State's Attorney is too busy ferreting out crime and looking for people to arrest, to remain neutral.

by Bernard Woodmansee

****

OLD HICKORY

There stood once a tree beside the shore
 It stood there long ago
It's limbs were long and twisted
 She had weathered many a blow

Her trunk was gnarled and knotted
 By the lightning, ice and snow
And her roots were crooked fingers
 Clutching the sand below

She was an ugly creature
 Stung by the wind and surf
And she stood like a southern preacher
 Taking it's iron like mirth

And now that my hands are knotted
 Like the roots of that old tree
And my soul is surely potted
 Like the seeds sifting in from the lea

The North winds grow colder and sharper
 Like the blade of a whetted knife
And thoughts pierce my brain like a dagger
 I'm nearing the end of my life

My eyes grow dimmer and dimmer
 It's a long long haul to the shore
And I scarcely catch me a glimmer
 Of a hammer and a saw any more

No, Love:

"Speak not to me of bravery
 For what is bravery worth ?
The hickory heart is softened
 As it bends slowly toward the earth."

by George Wood
(Jan. 27, 1971)

****

Note!

Written for Louis Bowers. Mr. Wood is a recognized Bird Carver, a member of the National Wood Carvers Association. Some of his work has been donated to the Plymouth Wax Museum, Plymouth Mass. Above all, Mr. George Wood is one wonderful human being.

He and his son, Danny, have built a shop for Louis Bowers to use for his business of carving, if he is ever released.

The Luparar Staff

News In General
Around the Prison.
(December to January)

by L. Bowers

State Engineers all over "C" block on Dec. 7, looking over their bullet proof "bubble", between "C" and "B" blocks.

Some sort of State Officials (perhaps Inspectors) looking over the Commissary and Cell Block on Dec. 7. Escorted by Sgt. John Ryan.

Dec. 6. Mr. Hogan looks over our Mess Hall and Kitchen and I have been told that he wants some changes made to insure cleanliness. (No offense meant to our new cook, he seems to be doing a good job.) An institutional Kitchen and Mess Hall job is an ungrateful job. It's long hours and hard work at times. I won't pan anyone who works there; they deserve more than the two days extra good time and I hope that Hogan will try this in an effort to build interest in the job. Kitchen help should be paid also. We hope that some inmates will write us the full story on Mr. Hogans visit to the Kitchen.

We also noticed Mr. Hogan looking over the Hospital a few days prior to Dec. 6. In fact, Mr. Hogan has been very interested in old V.S.P. <u>lately</u>. I wonder why ?

People have remarked that there seems to be a more relaxed attitude in the visiting room; less tension, visits able to kiss, hold hands, etc., and not be considered abnormal. This is perhaps due to the strip searches before and after visits. The officers are trying to speed up visits to the visiting room. It's now only takin 10 minutes where it once took me 30 minutes to reach there. We appreciate those that endeavor to rush us there as they

know how important a visit is, and I'm sure would not like a half-hour aggravation before their visit.

The rumor is that Jack Shuttle, our Editor, was arrested upon suspicion of D.W.I., shortly after coming from a Mission Committee meeting last week (Dec. 4). What's the story on that, Jack? They serving Coffee Royale up there now? We know you aren't a drinking man, so perhaps it's that bad cough syrup I used to get ahold of. We were glad to see you well enough the following day to help with the paper. I had the place going crazy trying to find papers and assuring Bill Eddy that neither of us ever " touched the stuff." It's a good thing you had four canes in the cell with you, you looked so sick I guess you needed them all.

Many of you guys (inmates) have told me that you'd write up some articles for us. We'd like to see a broader view of people writing for the paper - so get busy. It is your paper you know, your way to say what you feel. Don't leave it all to a few people.

We tell this to Staff, Counselors and Guards too. So far, none will even curse us out in writing. I'm sure they can give us some articles, so let's see what happens.

It is getting so lately that whenever an inmate passes a door here, a guard must "shake" him down. I've had hands run over my body so much that I'm beginning to think perhaps a certain few guards may like that shake down business as more than part of their job. Some ain't got that gleam in their eye for nothing. Give us a break as you all go home at night.

I've told George Sandborn that I may keep my mouth shut 1 hour every morning now that he can't lock my cell door with that big grin from ear to ear. I didn't promise, I said, I may !!

It's getting hard for me to get a conversation with some people here as they all think I'll quote them in the Luparar.

Did you guys hear about the letter "Porker" wrote? It was sent to me but a 66 year old lady in Windsor opened it by mistake with her bills. She said, "My God ! I couldn't think who'd ever write me like that." She must have thought "Chops" was one uncouth bird before finishing that letter. I apologized to her Chops!

Bernard Woodmansee has the only cell in the United States that's "wall-papered" with "Civil Suits." If there is any official in the Vermont area whose name isn't on he wall, he must have hibernated for the winter.

Buck Dragon says he's sick of me kissing his visits goodbye. I'm sorry Buck, I just couldn't help it.

T. Texas Tiny Teeter has left us all until after January 1, to be with her parents in Texas. We all wish Teeter a pleasant trip, Merry Christmas and a very Happy New Year.

****

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The Kidnapper

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Legal Editor

-Violence at Manchester-

[illegible] Police Officer was killed in Manchester, Vermont, the various police agencies throughout the state have expressed shock at this turn of events. The Old Chief, has now gone to rest and I am wondering how many more officers will die violent deaths before the criminal element and the police, decide to lay down the Guns.

A few years back in Burlington Vermont, a young man while committing burglary at the Brewer Brothers Garage, while unarmed was shot to death by Burlington detectives. I certainly don't condone the young man committing burglary, but neither can I condone the police killing an unarmed man who is committing a burglary at an unoccupied garage.

These events are years apart in time. However, both were criminal acts, burglary, where only property was at stake. But both resulted in death from police over-reaction to a crime where no person was in danger of injury. Only after the police acted in both incidences did the crime result in violence.

After the Police Murder in Burlington, I know of many a burglar who had never carried a gun, that started carrying weapons on burglary jobs.

Not until the police and criminal element both disarm can we expect things to change. The English Police, don't carry guns and seldom is a crime of violence in England, found to be by fire-arms.

The criminal element is ready now to disarm are the police?

Bernard Woodmansee

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TO THE CONS FROM US

Parting Shot

by; Ary Robideau

GOVERNOR

Dean " Dingy " Davis

As the year of 1972 makes its departure; it carries along with it our most ditinguished and Honorable Governor; better know to the convicts here in the dungeons as Dingy Dean.

I had the honor of watching Dingy Dean the other night on T.V. You can tell at once by his appearnce, he is not a spendthrift; especially with his own funds.

The haircut he was sporting; his wife had to have set a bowl on his head and followed the circle; No barber on earth would take credit for that haircut. His suit I am sure must have been lifted from a care bundle, intended for the poor niggers in Africa.

If old Dingy was as saving with the tax-payers money as he is with his own, the State would be wonderful .

You have to hand old Dingy credit for one thing he is really socking his friends and relatives in offices around the State before he is snatched from the throne. It sure will not leave many appointments left for the New Governor- Elect to make, Dingy is filling up every office he can. Wonder what he is really trying to cover up? It would really be a shame if they caught old Dingy with his hand in the Cash register some where along the line . If that be the case he must play the horses he sure never spent it on personal appearance or clothes.

Some of the convicts he has in the dungeons down here , or wondering if maybe this contractor is not maybe a cousin, or a close friend.They are really ripping off the Tax-Payers on this Construction deal here at the

Of course all the Convicts here in the slave compound , or almost [illegible] there was nothing kinky in the Motrola deal ; where they were awarded the contract for all of the police radios. We claim the whole thing was honest and ab ve board. There are a whole bunch of us in here doing time for a hell of a lot less.

I do not c re to sound like Walter Winchel; but you Mr. & Mrs Public notice the de l was hushed right up and there is no longer any investigation.

About the only thing nice that can be said about around the prison, is he helped make or life hell. He is one terrific Con-Man.

Every one here at Windsor done what we could for him. We all voted to get him out of office. We hope we can be of service in the near future in the event he should slip on the ice and break his *'%&$"!¢ neck , or get hit by a speeding car. We will all send him a get well card.

So long Dingy we all wish you were here with us.

****

OBITUARY OF A PAROLE BOARD

BY : JACK SHUTTLE

With the new Governor-Elect;Tom , Many new changes are looked forward to by the old miserable Convicts at Winsdor. One is the high hopes he may push our up to date modern Parole Board right out the front door, we realize they may hate relinquish their plush 20,000 dollar a year job.

The New Regime may replace the political mongrels of the old Reich. Of course there will not be too many convicts at the funeral, the old S.S. crew was not too liberal with their paroles, unless yo u happened to be convicted of a Skin Beef, (Prision slang for a Sex rap .) Of course we use the terms S.S. , REICH , or GESTAPO as it is only a one party system; REpublican. The same as the old NAZI Germany was, all HITLER. The only thing they have failed to come up with at Windsor so far is the Gas Chambers and the Furnaces. Of course some of the Cons are begining to wonder if this may not be in the makings for the New Year of 1973.

They are building something in the old A-Block Cell House worth $ 285,000 . Of course it is still not visible ot tangible. Maybe soon they will unveil the horrors. It has to be something of that nature, all they keep hauling in is more concrete and steel, unless they are making a huge gravestone for the parole board. Or a Statue of our next Warden, Mr. Coxon , to go out on the front lawn . He advises me the new parole board will be much more libera once he is in full charge.

Our worthy disciple of the Lord, Mr. Youngman, has promised to preach a nice Sunday sermon about the Evils of Sin , along with his goodbyes. I sure hope he is not entertaining thiughts of being appointed to the parole board. You would never stand a prayer of a chance , once that devil had the reins. It is heavily rumored he is member of the KLU-KLUX-KLAN ,. Again this is only a rumor . We have nothing postive to base this on.

Again back to the Parole Board, and the Parole Officers, I can-not see where any of them could possibly utter a sound.Once Mr. Salmon goes to replacing them, they


A.D.
YOUR BEYOND REPAIR?
His
His
M.T.
V.S.P.
HA, HA, HELP?

had a Healthy, Wealthy, prosperous reign. Accomplishing absolutely nothing, but a much fatter Bank Account. I shall return again next Month, on how the Parole Board decides on who is eligible for parole , and who isn't. It is really a tragic thing , the part they have played in Amerika"s slavery of Convicts, with no more knowledge of the individual, than they were told by the police who arrested him , the prosecutor who, tried him, the Judge who sentenced him, and the slave masters who hold him in Capativity. you tell me where in the hell did the convict ever stand a chance of being helped. By anything the parole board had knowledge of. Not one of those crooks I am sure had a nice or kind word to say about any-one they had just coercered into Penal Servitude and slavery. They talk to you ten (10) minutes and make a decision, that affects ten-years of your life. That is really a nice trick, and wonderful to be that smart. Of course I have another opinion, I just won't stick it on this paper.

Do unto others, as you would have them do unto you. I wonder if they really mean that. ??????

BLACK CONCLAVE PLANNED AT WOODSTOCK

Black leaders from every ghetto in the United States are preparing to meet at Woodstock Vermont to discuss the ways and means of integrating the State of Vermont.

Thousands of blacks are expected to come to Vermont to support their leaders and demand that white racist Vermont open its' doors to black people.

Letters have been pouring in to the Lunarar staff asking more information on the proposed black experiment. Needless to say the Lunarar is enthusiastically answering all inquiries into the matter.

Black representitives are already in the state looking for locations suitable to erect tent cities on the idea of"Ressurection City"held at Washington, D.C.

The Lunarar has even received correspondence from the Zulu tribe of Africa inquiring into the possibility of immigrating to Vermont. We are checking the quotas on immigration now.

We hope that all true Americans living in Vermont will aid us in gaining 300,000 black people into this state. Anyone having land to sell or houses to rent, please contact the Lunarar staff anytime.

William Mayer

X

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[illegible] Wanita, blind and ill. touches all who know her

(This article was written by Jeanne Pelton [illegible] and was published in the Windsor Star).

This article is written for all my little friends in Active 45, a Sunday school class taught by Mrs. [illegible] in Riverside Church, Windsor, Ont. Sarah, Valerie, [illegible] all who know Little Wanita.

Now we all know little Wanita, the readers, to share it with us. There's a children's right to tenderness and caring to figure with little Wanita, who is [illegible] by birth defects and illness.

I learned about her from "Grit" newspaper and I sent the story to these little children in Saxton [illegible] I knew could figure out a way to help Wanita and her family. The children in turn spoke to Mrs. Palmer [illegible] not like to know a little girl as a human. She just [illegible] because Paul the Apostle [illegible] works come from all walks of life.

And so we met Wanita Darlene Walker. [illegible] are the parents of the Rockies.

Wanita, who is 16 years old, is a cuddly little [illegible] who never developed. She is on the petite side for a four-year-old girl, she is that tiny.

She is blind, unable to walk, cannot [illegible] but she reacts to [illegible] her or knew her with love.

She has undergone [illegible] cataract operations, double pneumonia, one lung collapsed, and has been on [illegible] for two weeks. When she was one year old, her mother was told she would [illegible] 85 per cent of her patients to a six-hour operation. Her heart stopped for three minutes. A doctor massaged it back to life, but little Wanita has had to take cortisone, a drug which can have grave side effects.

No one can write into this story all the pain, suffering and torment this tiny girl has endured with smiles.

Seldom is [illegible] home longer than a week [illegible] she needs continual [illegible] attention.

Wanita [illegible] people without [illegible] friends.

Though Wanita cannot see, she senses [illegible] that goes on around her. If [illegible] family should be quiet [illegible] anything, she might [illegible] leave, she will ask [illegible], what are you [illegible] It is not a demanding [illegible] but does she [illegible] She is so lovable [illegible] difficult to part her without hugging and kissing her.

The most remarkable thing about her is how she touches other lives [illegible] cheerful, uncomplaining [illegible].

Her cousin in Vietnam wrote that [illegible] his darkest hours he remembers that blind child, "who never cried, never complains" and [illegible] own troubles seem small.

We [illegible] read this to remember [illegible] so that all our troubles seem small in comparison.

What does the future hold for Wanita? [illegible] offer no medical [illegible] life. Her [illegible] God control [illegible] for her.

We [illegible] can be that purpose [illegible]

We [illegible] return for Wanita [illegible] efforts to assist [illegible] consists of two [illegible] a mother.

The fate [illegible] the high cost of Wanita's care. Born prematurely [illegible] not covered by [illegible] insurance [illegible] today runs between $25 and $50 per week.

"We [illegible] a burden," said her mother. "She is not a cross to bear. She's a bundle of love," she added. We hope that you, the readers of this article, will express your love for Wanita's courage and the faith of her parents.

Surely, in some small way, all can let this little child know that her [illegible] for all is not wasted.

I've written her parents asking permission to start a fund for Wanita. I'm sure others can do [illegible] more easily than I, in private by housing one book to care for her [illegible] life.

We hope it may touch many more lives, Wanita. Any readers wishing to assist Wanita may contact a council of some [illegible] group.

In the Kelly-Anna Miller Fund Drive a home [illegible] this issue. I'm sure in this case they would do the same.

Someone I'm sure will be touched by Wanita.

Someone more capable than I must make the arrangements to help.

Louis Bowers

Windsor

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** PAUL HUDSON **

Paul Hudson, the Prosecutor who covers up criminal activity.

Paul Hudson, who abuses his office.

Paul Hudson, the man without integrity.

The three preceding statements describe the kind of man [illegible] States Attorney. This man purposely has covered up the prison guard's complicity in the August 20th escape. This man, [illegible], prior to their arraignment, released to the press the arrest of Frank Perrotti and Roy Rebideau; thus predjudicing their case before they appeared in court on an alleged murder charge. [illegible], however, refused to release the names of the recently busted organized gambling ring, because it would predjudice their case prior to arraignment.

People of Windsor County, this is your fair and honest prosecutor. I openly accuse you, Mr. Hudson, of conduct less than professional and of being a man lacking in integrity; a disgrace to the legal profession. You are a liar, a thief, and a scoundrel.

Roy Rebideau

****

Special Greetings from Bob Opal's Polka Radio

Wouldn't it be nice to send a special greeting or to hear one from your loved ones ?

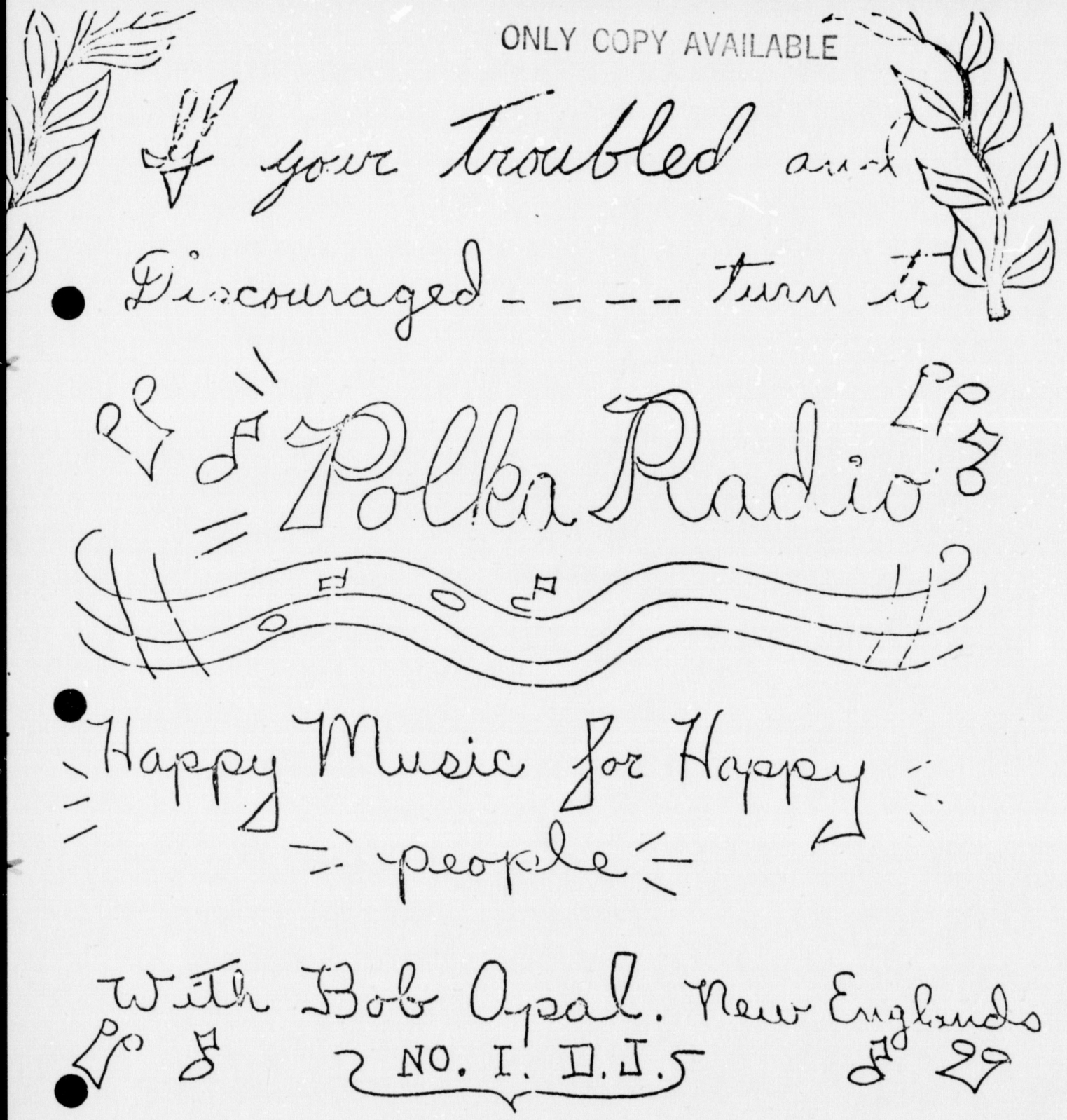
I have spoken to Mr. Opal and he says that although he would personally like to do this, the staff says NO. He says that he couldn't possibly do it every week, but that maybe every two weeks or once a month he could set aside a few minutes for our greetings. He will not mention the Institution, but will just say, from _____, to _____, of Windsor, Vermont. I have listened to Mr. Opal's program quite often and I do enjoy it as I'm sure others here do. If we all give this idea a little support, maybe we can get Mr. Opal the permission that he needs to do this for us and our loved ones.

I hope you will all give this effort your support.

till next time,

L. Wayne Bakey

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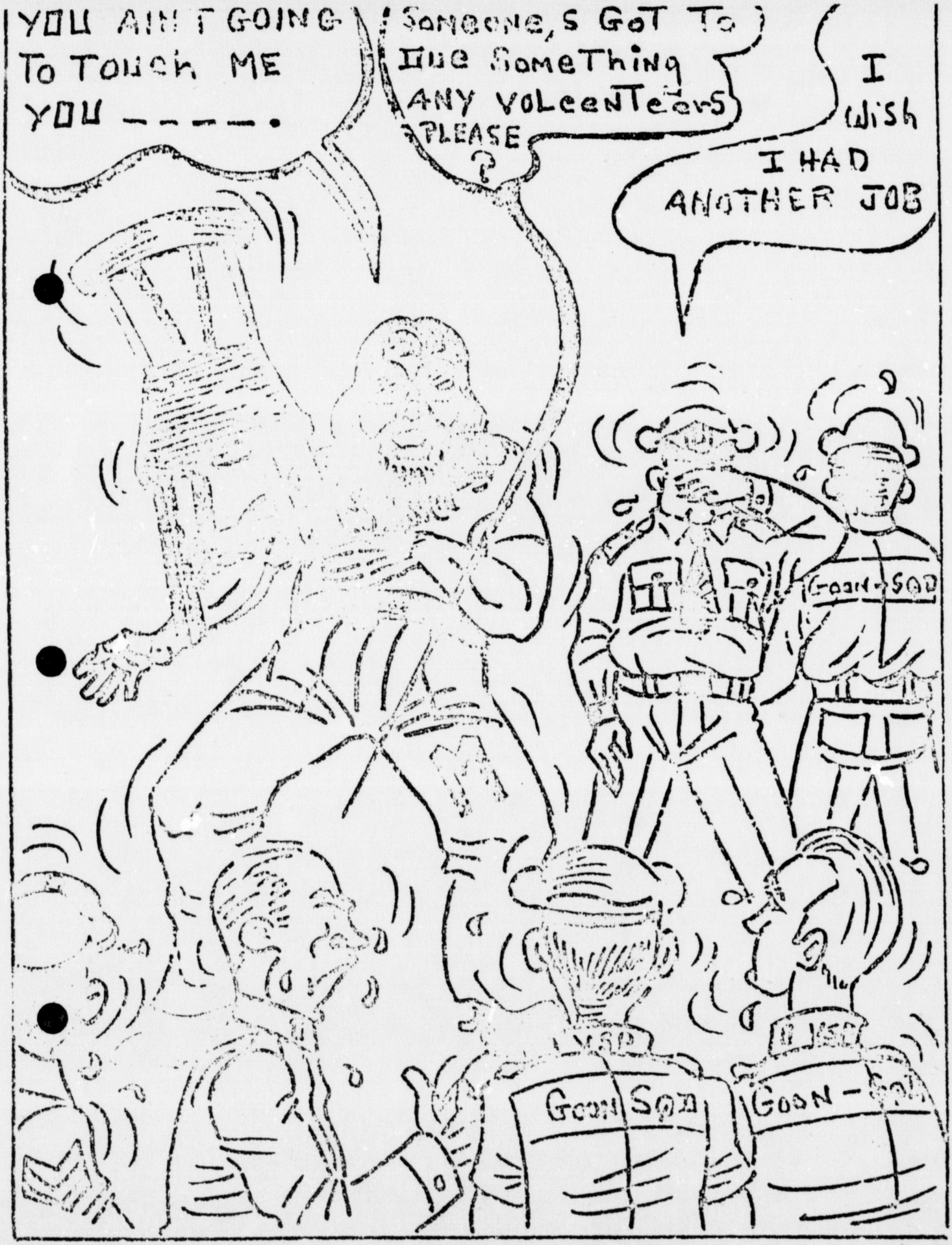
LET US ENTERTAIN YOU .....WITH GOOD POLKAS AND OLD COUNTRY STYLE MUSIC ON....

BOB OPALS' "POLKA RADIO PROGRAM"

EVERY SUNDAY...FROM MORNING TILL EVENING

ON ALL RADIO STATIONS IN VERMONT AND NEW HAMPSHIRE....."HAPPY MUSIC FOR HAPPY PEOPLE"

Paid by"Bob Opals' olka Fan Club'.



LIKE THEY SAY, IT ALL HAPPENS AT THE Y.?

STATEMENT MADE BY MR. MOEYNS
TO THE LUPARAR STAFF ON FRIDAY,
JANUARY 5, 1973

ANNEX "B"

In November 1971, an agreement was worked out by staff and inmate representatives at Windsor to begin a penal publication.

A set of agreed upon guidelines were established which included the following:

- All articles subject to approval of the editorial staff.

- Issues to be attacked and not personalities.

- The rebuttal system to be used at all times.

- Inflammatory articles not to be published.

The Luparar was initiated, with a combined inmate and institutional employee editorial staff, and assistance toward publishing provided by the institution in such forms as staff time and equipment use.

Volume VI, No. 12 (January, 1973) violates both the spirit and letter of the November 1971 guidelines. None of us can quarrel with criticism if it is within the bounds of decency, but this issue clearly is beyond. This issue is far from the guidelines relating to issues and not personalities.

Until such time as the guidelines are met or new guidelines agreed upon, no further assistance will be provided and distribution of the January issue will be halted.

The administration has no desire to prevent criticism of issues, and will make immediate arrangements to meet with staff of The Luparar to update and improve guidelines. This would extend to having an outsider involved, such as one of the attorneys who apparently have the confidence of inmates.

We hope The Luparar can continue to function as a medium for constructive criticism.

ANNEX "C"

STATE OF VERMONT
AGENCY OF HUMAN SERVICES
DEPARTMENT OF CORRECTIONS
STATE OFFICE BUILDING
MONTPELIER 05602
TELEPHONE (AREA CODE 802) 828-2452

July 10, 1973

COPY

Richard Kohn, Esq.
Paul Berch, Esq.
Vermont Legal Aid, Inc.
56 Railroad Street
St. Johnsbury, Vermont 05819

Gentlemen:

In line with my testimony at my deposition, I remain willing to discuss with you the problems surrounding the publication of The Iuparar. I continue to favor the existence of a Facility newspaper, if published under reasonable and well-defined guidelines, and will authorize the Facility to cooperate in the printing of such a paper if agreement can be reached with you concerning those guidelines.

I have asked Charles Bristow to prepare a comprehensive new set of guidelines modeled on those utilized by the federal court in the District of Columbia case, and tailored to our own Vermont administrative needs. (A copy of the District of Columbia court order is enclosed for your convenience.)

I have instructed Charles to cooperate with you in scheduling any meetings which you may desire. I have also in-

structed him that, should we be unable to settle our differences, the attached rules should be presented to the court at an appropriate time as a representation of the rules under which we are willing to support the publication of a Facility newspaper.

Sincerely,

Kent Stoneman
Commissioner

KS/cbl
Enclosure

PROPOSED GUIDELINES FOR PUBLICATION
OF THE LUPARAR

1. The Luparar shall continue to be published.

2. All writings on social, political, and economic theory and philosophy shall be permitted, subject only to such limitations as are otherwise stated herein.

3. All articles in The Luparar shall have attached thereto a proviso stating that the views expressed therein are not necessarily the views of the entire inmate population nor are they expressions of the views of the Vermont Department of Corrections or of the State of Vermont.

4. There shall be no express or implied encouragement, instruction, or advocacy of criminal or illegal actions, or actions in violation of the rules and regulations of the Vermont Department of Corrections, or the presentation of any materials, which so expressly or impliedly encourage, instruct, or advocate.

5. There shall be no mention by name, by specific title, or by position reference of any Vermont Department of Corrections employee, official, or inmate resident, unless and until it is first determined by the Supervising Officer or his authorized representative that such specific reference will not have an adverse effect upon or be otherwise detrimental to the good order, security, or operations of the institution.

6. There shall be no mention by name, by specific title, or by position reference of any State of Vermont employee or official unless a clear factual basis exists therefor.

7. There shall be no mention by name any private citizen unless a clear factual basis exists therefor.

8. A. The Supervising Officer shall appoint a coordinator from among his staff, whose duties shall consist of reviewing stencil matts of The Luparar for compliance with these rules.

8. B. Within five working days of the date on which The Luparar submits stencil matts prepared for publication to their coordinator, the coordinator shall initial, approve, and deliver the same for reproduction or, if The Luparar coordinator finds material not in compliance with these guidelines, and acceptable revision cannot be resolved between the coordinator and The Luparar, the coordinator shall within five working days of receipt of same deliver the stencil matts to the _____. Within five working days of receipt of said stencils, the _____ _____ shall approve and deliver the same for reproduction or, in the event said _____ finds material not in compliance with these guidelines, he shall within five working days from the date he received the stencils, deliver said stencils to The Supervising Officer who shall within five working days of receipt thereof either approve and deliver the newsletter for reproduction, or, by written memorandum inform The Luparar of the specific material to which objection has been made,

the reasons for these objections, and the specific changes necessary for compliance. When the stencils are delivered for reproduction, they shall be reproduced and available for distribution within 10 working days of receipt thereof.

8. C. Approval by any Facility official does not preclude independent review and disapproval of any actual or proposed publication by higher officials of the Vermont Department of Corrections or

8. D. Except as stated above, once final approval is given to any proposed publication, no changes, additions or deletions, or other modifications shall be made.

9. Only residents of the Windsor Facility may participate in the editing, compiling, and publication of The Luparar newsletter, although articles may be contributed by residents of any of the Department facilities, with the exception in the juvenile programs.

10. The Luparar newsletter may be published once a month; its length up to 30 pages shall be within the discretion of The Luparar; insofar as stencil matts, mimeograph paper, and other related materials necessary for publication are not voluntarily made available by the Vermont Department of Corrections, they may be supplied by outside sources; members of The Luparar shall have reasonable access to typewriters at the Windsor Facility to prepare stencil matts for mimeographing.

965
SCF WINDSOR

B U L L E T I N

ANNEX "D"

SUBJECT: New Mail Regulation
Effective Date: 3/20/

MAIL

There is no limit to the number of letters you may write or receive.

Stationery, envelopes and stamps for up to 7 letters per week will be furnished by the facility. If you wish to write more than 7 letters per week you may purchase stationery, envelopes and stamps at the canteen. If a resident is indigent and wishes to write more than 7 letters the facility will provide additional writing material and stamps free of charge.

You may send mail to anyone and all outgoing mail may be sealed. The administration reserves the right to inspect outgoing mail when there is reasonable grounds to believe that the mail contains contraband or contents which create a clear and present danger to the security of the facility. Any outgoing mail that is opened will be opened in the presence of the sender.

All mail should be properly addressed and your name and return address must appear in the upper left hand corner. If you wish to send money from your personal account you must attach a withdrawal slip to an unsealed addressed envelope.

You may receive mail from anyone. Incoming mail will be opened and inspected for contraband in your presence at a regularly scheduled mail call.

You may receive money orders but not personal checks or cash. If your incoming mail contains a money order you will be asked to endorse it and it will be cashed and deposited to your personal account. You will be given a receipt for the money order.

Packages: Arrangements for sending out packages can be made with the staff. All incoming packages will be opened and inspected for contraband in your presence.

Any special problems about mail should be brought to the attention of the Assistant Warden.

This new mail regulation was prepared by the Resident Guidebook Study Committee. It will be effective on a temporary trial basis and is subject to change if it is abused by the residents or results in a security or disciplinary problem for the facility. If it is successful it will be included in tne new Guidebook.

Since this regulation completely changes the present mail handling procedures it will be necessary to delay its effective date until 3/20/72 so that preparation can be made to implement it at this facility and to coordinate these changes at the other facilities operated by the Department of Corrections.

Approved: _____ Warden

Kurt Strasmann

Commissioner of Corrections

UNITED STATES DISTRICT COURT

FOR THE

DISTRICT OF VERMONT

THE LUPARAR; JOHN SHUTTLE, EDITOR OF LUPARAR; CRAIG MURRAY, INDIVIDUALLY AND ON BEHALF OF ALL OTHERS SIMILARLY SITUATED	:	
V	:	Civil Action File Number 73-95
R. KENT STONEMAN, INDIVIDUALLY AND AS COMMISSIONER OF THE DEPARTMENT OF CORRECTIONS OF THE STATE OF VERMONT; MICHAEL MOLYNENS, INDIVIDUALLY AND AS ACTING WARDEN OF THE VERMONT STATE PRISON AT WINDSOR, VERMONT	:	

PRETRIAL CONFERENCE

Before: HONORABLE ALBERT W. COFFRIN, U.S.D.J., Burlington, Vermont, May 14, 1974.

Appearances:

RICHARD S. KOHN, ESQ., American Civil Liberties Union, for the plaintiffs.

ALAN W. COOK and CHARLES BRISTOW, ESQRS., Assistant Attorneys General, State of Vermont, for the defendants.

Francis A. Cumming, Reporter
28 Waterman Street
Barre, Vermont 05641

THE COURT. How long would you like, Mr. Kohn, to reply to the defendants' memorandum?

MR. KOHN. Perhaps toward the end of the month.

THE COURT. I will give you until the 1st of the month. So, the plaintiffs will have until the 1st of the month to file a memorandum in response to the defendants' motion to dismiss, or in the alternative, motion for summary judgment, and if we need a hearing, I will schedule a hearing after I have read the plaintiffs' memorandum.

I will not, at this time, sign the pretrial order, depending I do want to read the defendants' motion, but the proposed pretrial order, as I have read it, would seem to be adequate to get into a trial, but I would hope before we get into that, some of the factual issues could be resolved by stipulation, or agreement, those that were in dispute.

MR. COOK. I agree, your Honor.

C E R T I F I C A T E

I, Francis A. Cumming, United States Court Reporter, United States District Court, District of Vermont, hereby certify that the foregoing is a true and complete record of my verbatim stenotype notes of the pretrial conference in re: The Luparar; John Shuttle, Editor of Luparar; Craig Murray, individually and on behalf of all others similarly situated v R. Kent Stoneman, individually and as Commissioner of the Department of Corrections of the State of Vermont; Michael Moeykens, individually and as acting warden of the Vermont State Prison at Windsor, Vermont, Civil Action File Number 73-95, before the Honorable Albert W. Coffrin, U.S.D.J., at Burlington, Vermont, May 14, 1974.

Francis A. Cumming

December 13, 1974
Barre, Vermont.

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF VERMONT

THE LUPARAR, JOHN SHUTTLE, EDITOR OF THE LUPARAR, CRAIG MURRAY, Individually and on behalf of all others similarly situated,	)	
plaintiffs,	)	CIVIL ACTION DOCKET NO. 73-95
v.	)	
R. KENT STONEMAN, Individually and as Commissioner of the Department of Corrections of the State of Vermont; MICHAEL MOEYKENS, Individually and as Acting Warden of the Vermont State Prison at Windsor, Vermont	)	
defendants,	)	

PLAINTIFFS' MOTION FOR
SUMMARY JUDGMENT

Plaintiffs move the court as follows:

That it enter, pursuant to Rule 56 of the Federal Rules of Civil Procedure, a summary judgment in plaintiffs' favor for the relief demanded in the complaint on the ground that there is no genuine issue as to any material fact and that plaintiffs are entitled to a judgment as a matter of law.

In support of their motion, plaintiffs submit the following:

(a) Nov. 3, 1971 Policies and guidelines

(b) March 20, 1972 mail regulations

(c) Jan. 5, 1973 Statement by Mr. Moeykens

(d) Jan. 8, 1973 Memo on meeting with staff of Luparar

(e) Jan. 29, 1973 Letter from Gene Wilson stating Department of Correction policy toward Luparar.

(f) July 10, 1973 letter from Commissioner Stoneman setting forth proposed guidelines for future issues of the Luparar.

(g) The Luparar, Vol. V No. 11

(h) The Luparar, Vol. IV No. 10

(i) The Luparar, Vol. II No. 6

Dated: June 7, 1974

/s/ Richard S. Kohn
RICHARD S. KOHN
American Civil Liberties
Union of Vermont, Inc.
43 State Street
Montpelier, Vermont

Attorney for the plaintiffs

NOTICE TO ALL INMATES & ADMINISTRATION

SUBJECT:::: PENAL PUBLICATION

ON November 3, 1971 a volunteer group of inmates met with representatives from the staff to discuss policies and guidelines that should be followed in publishing a penal publication. The paper will and should be geared to be informative both to the inmate population as well as the administrative segment of this institution. The following is noted:

Inmate volunteers who met:

J. W. Robertson (Abs.)
J. Kasper
J, Labor
J. Morse
A. Shepard
G. Tatro
C. Williams
C. Aldrich

Staff who met:

Dr. Hall - Treatment Rep.
K. Cooley - Lt. for Lt. Silva (Rep.)
Crandall - Custodial Rep.

R. G. Smith met briefly with these people to express his views.

These people of the inmate population who met to set up the policies are not necessarily those who will eventually be working on the publication as you will note the outline that will be followed in selecting the people you want to work on the paper - the people with journalistic experience who will represent you in all maters pertaining to the publication.

POLICIES & GUIDELINES

For the cost of the initial publication and those immediately following, the cost will be approximately $30.00. Some months this will be less. Untill such time as we receive contributions for the publications this money will have to come from the inmates fund. A mailing list is being compiled so that other state institutions will be aware of what is happening here. The paper will go to other institutions throughout the country, to state legislatures, to judges, lawyers, newspapers, families etc.

Freedom of expression: All articles submitted are subject to approval by the editorial staff.

Editorials will attack issues and not personalities: The rebuttal system will be utilized at all times. Letters to the editor are welcome. Articles, from the inmates, administration, or anyone who wishes to comment or write articles for the publication; again they are all welcome for publication.

One note to everyone writing articles for publication please remember that articles will not be published. Once again remember that the editorial staff reserves the right to approve or reject articles. If you should write an article and it is not approved, you personally will be notified and given the reason why. (Con't)

(Policies & Guidelines)

That the four (4) corrections Centers be made aware of the publication and that Lakeside - St. Albans all have the right to submit articles concerning that institution to this paper. That they too be governed by the same policies and guidelines as this institution. The facilities are a part of the complete system therefore they too are open for comment and criticism wherever deemed necessary.

That the paper not be allowed to be used as a tool for personal gain. This does not include articles such as advertising as these are very welcome by the publication. Again subject to editorial staff approval.

No pictures of inmates or anyone else to be published, unless the paper be given written permission to use pictures by the individuals.

The publication will publish such items as - program schedule - movie schedules, progress reports on programs, - basically items of interest to all concerned with corrections.

Re-prints from other publications, newspapers etc., will be printed.

Time schedule for meeting times, if not in conflict with classes , programs etc. Requested time is : Friday-Satrday and Sundays between the hours of 5:00 PM and 9:15 PM. That the time for meeting with the administrative segment be held on Friday afternoons begining at 1:00 PM to------ Any representative is also given an open invitation to attend any evening meeting of the publishing staff.

Requested that a typewritter be available for the publishing staff at all times of their meeting.

SEE ANNEX "B" ENTITLED "NEW MAIL REGULATION, EFFECTIVE DATE: 3/20/72 AT PAGE 208 OF APPENDIX.

SEE ANNEX "C" ENTITLED "STATEMENT MADE BY MR. MOEYKENS TO THE LUPARAR STAFF ON FRIDAY, JANUARY 5, 1973 AT PAGE 202 OF APPENDIX.

FORM 184

"D"

DEPARTMENT OF CORRECTIONS — OFFICE MEMORANDUM

TO: R. Kent Stoneman, Commissioner of Corrections

FROM: J. V. Hocykens, Supervising Officer

DATE: January 8, 1973

SUBJECT: Meeting with Luparar Staff

Pursuant to your instructions last Friday evening, January 5, I met with the current Luparar Staff, namely: John Shuttle, Richard Cronin, Louis Bowers, Gerald Williams, William Mayer and Ludger Benoit. Shift Supervisor George Mayo accompanied me in this meeting where I advised the above inmates that we had run into some difficulty with Edition #12 of the Luparar and that I had prepared a statement concurred with by the Commissioner, and I furnished each with a copy. I pointed out that I had not had an opportunity to read the entire issue but I had found two articles already that raised objections and that I would read through the rest of the issue over the weekend and meet with them again on Monday for announcement of further objections if any were found.

Cronin and Bowers were the most outspoken critics in taking opposition to my various objections to articles, but other cooler heads prevailed and everyone agreed to wait until Monday.

This afternoon, accompanied by Mr. Kenneth Cooley and Dr. Norman Hall, I met again with the previously named Luparar Staff and reemphasized my position that so long as this facility provided financial support, the printing presses and the use of Institutional Industries employees I would insist that the Luparar contain no articles that attack personalities or are considered inflammatory or uncomplimentary toward any members of our staff or any State, local or county officials. I further stated that until such time as the original policies and guidelines adopted on November 3, 1971 were changed that I intended to adhere to this written policy. I next reviewed the January issue of the Luparar, and I pointed out each article that I objected to and that was not acceptable. Cronin wanted to know if he could mail a copy to his attorney and I said no since this edition was now considered contraband in its present form. Shuttle presented me with a written statement that on this date mail officer David Tucker had refused to mail out 72 copies of the Luparar. I was asked by Shuttle if I also would prevent the mailing of these issues, and I affirmed that I would, at which Bowers stated that I was violating the U.S. postal regulations and the First Amendment. Finally Williams summed it up for everyone stating that there was no need to even attempt any further publication of the newspaper if the administration was going to censor it and that there was no further need for conversation. I informed the Luparar Staff that as of this moment all January issues were contraband and they should turn them over to the staff for storage as I did not intend to destroy any of these copies until the outcome had been completely decided.

Bowers then stated that 85% of the inmates desired to have Attorney John Schuchardt represent them in this matter and that the ACLU would represent them and also certain newspapers. They warned me that this matter would be taken to the courts. I finally consented to telephone Mr. Schuchardt and to advise him of the matter and to let him know that Bowers would be contacting him soon and that he, Schuchardt, should contact Mr. Craig Murray of the ACLU who had consented to represent the inmates in this matter.

J. V. Hocykens

JV:kb

cc: Inmate Publication File

J. V. Hocykens, Supervising Officer

KENT STONEMAN

DEPOSITION EXHIBIT 3 CB

JAN 3 0 1973

DIVISION OF ADMINISTRATIVE SERVICES
DIVISION OF PROBATION AND PAROLE
DIVISION OF RESEARCH AND PROGRAM EVALUATION
COMMUNITY CORRECTIONAL CENTERS
LAKESIDE CENTER
CORRECTIONAL DIAGNOSTIC TREATMENT FACILITY
VERMONT INSTITUTIONAL INDUSTRIES
STATE CORRECTIONAL FACILITY
WEEKS SCHOOL

STATE OF VERMONT
AGENCY OF HUMAN SERVICES
DEPARTMENT OF CORRECTIONS

STATE OFFICE BUILDING
MONTPELIER, 05602
TELEPHONE (AREA CODE 802) 828-2452

January 29, 1973

Richard Kohn, Esq.
Vermont Legal Aid, Inc.
56 Railroad Street
St. Johnsbury, Vermont 05819

Re: The Luparar

Dear Dick:

In response to your question regarding the Department's position with respect to The Luparar, I have today reduced that policy to writing, and have furnished copies of it to all of our facilities. Our position may be summarized as follows:

1. The State does not feel that it has any legal obligation to provide the physical means (presses, paper, etc.) of publishing a newspaper, unless it (the State) chooses to do so.

2. The State is in favor of the continued publication The Luparar, or some prison newsletter, and will cooperate in such a venture, subject to the conditions set forth in the agreement of November, 1971, entered into between the facility and the staff of The Luparar.

3. The State will not cooperate in publishing The Luparar if the terms of the November (1971) agreement are not observed by The Luparar staff.

4. The State does not desire to censor outgoing inmate material destined for external publication.

5. The State can censor such material if it comes BACK into the prison, and if the material constitutes a "security" problem, as indicated in the existing mail regulations.

6. The confiscated edition of The Luparar probably does not constitute a "security" problem, under the very rigid tests the courts have laid down. The issue in question would be admitted into the facility, if it were published verbatim externally.

7. The Department has indicated its willingness to consider updating the terms of the November, 1971, agreement, as indicated in Acting Warden Moeykens' memorandum of January 5, 1973, and has indicated its willingness to have the residents represented by an attorney of their choosing.

8. I have personally indicated to you (as had Charlie Bristow) our willingness to listen to your ideas and attempt to settle the dispute between our respective clients.

9. As of today, the staff of The Luparar has indicated no interest in meeting with Acting Warden Moeykens to discuss altering or updating the guidelines.

10. As of today, the only alternatives you, personally, have suggested to us, are complete capitulation on our part or the promise of a suit being filed this week.

I do not believe that any of the above will come as a surprise to you, with the possible exception of our position on

the external publication of The Luparar, a position which I was unable to confirm for you during our last conversation, due to the fact that I had not had an opportunity to clear it with the Department at the time of our conversation.

Sincerely,

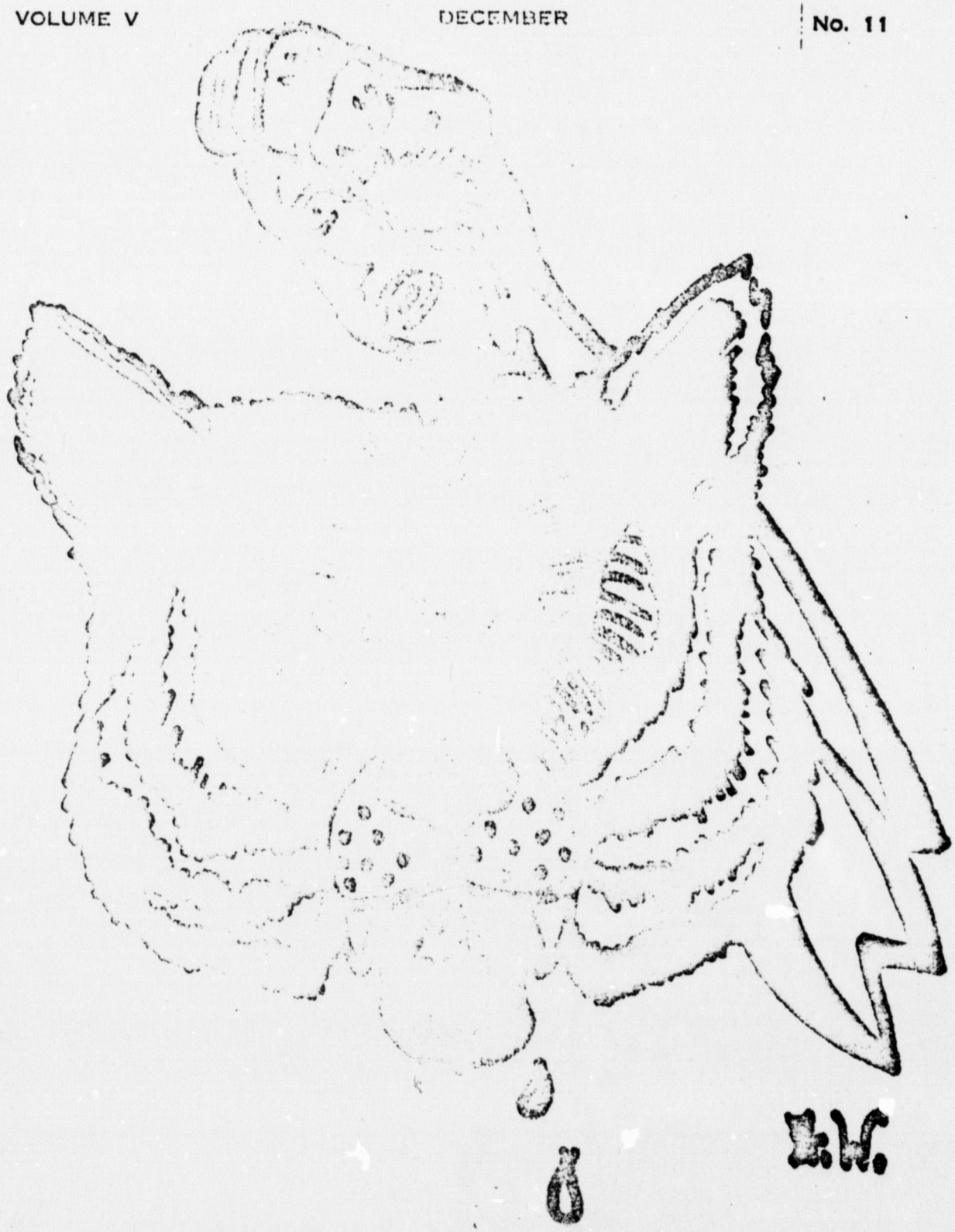
David E. Wilson
Assistant Attorney General
Department of Corrections

DEW/c

SEE ANNEX "F" ENTITLED LETTER FROM KENT STONEMAN AND PROPOSED GUIDELINES FOR PUBLICATION OF THE LUPARAR AT PAGE 203 OF APPENDIX.

THE LUPARAR

VOLUME V DECEMBER No. 11



GAIL AND HER COUNTRY GENTLEMAN

TO APPEAR IN VERMONT STATE PRISON CHAPEL

by,

Louis Bowers

Below is a copy of a letter received November 29, 1972 from Gail. Many will recall her first show here serval Months ago, compliments of the efforts of Franny Stillison an officer here, at which time Gail and the Band were well Received.

Nov.25,1972

Dear Louie,

We were real pleased to hear from you. So glad that you and the boys enjoyed our band.

I talked with the boy's tonight and we've decided that we will do another show Dec.17th. Thought it might be nice for Christmas. Please drop me a line and let me know the time you'd like us to come. I'll be waiting for your answer. Good luck and God Bless all of you.

GAIL

NOTE:

Mr. Bongis has given his O.K. for the Dec.17th show. Franny Stillison will again help Gail and the boy's in with the equipment.

We all thank you very much Gail, and wish you a Merry Christmas and a very prosperous New Year;along with the band.

We would hope in time to see a fund set up to pay entertain rs, who are willing to devote their time to prisoners.

Untill then we give you OUR thanks and appreciation.

Sincerely,

Louis F. Bowers

STAFF

EDITOR
John Shattle

ASSOCIATE EDITOR
Louis Powers

LEGAL EDITOR
Bernard Woodmansee

STAFF ARTIST
Jerry Williams

TECHNICAL ADVISOR
William Mayer

REPORTER
Richard Cronin

TYPIST
Bill Fox

PROOF READER
R. Nesto

CIRCULATION
Ludger Bouliot

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Poems

Letters

Reports

Published at Windsor, Vermont, Compiled and edited by inmates of the Vermont State Prison

Your bill is long overdue
please send 5.00 To assist
in our cost.
Thank You!

We of the Luparar Staff endeavor to see that our publication reaches all those who are interested in the truth about the Vermont State Prison.

We must set our price at $5.00 for twelve issues to cover the cost for printing, supplies, railing, etc. etc. etc.

Some months we are able to send out free copieshoping to broaden circulation.

We will send the paper to anyone who is able to donate any amount to the paper.

We must plead for donations to keep our paper in circulation and operation.

We assure you that all donations are sincerly appreciated.

Luparar Staff.

HARD WALKING LOUIE BOWERS

by; LAWERENCE HARDY

LOUIE WAS DOING A TEN IN AN EASTER PEN
AND HIS PARTNER WAS SLATED TO FRY
I COULD SEE IT ALL , AS I WALKED THE HALL
FROM THE CHAIR TO CELL BLOCK FIVE

IT WAS ALL AS REAL AS A POTATO PEEL
THAT HIS PARTNER WAS THE ONE THAT SQUEALED
AS THEY HAD TO SHOOT AND FORGET THE LOOT
FOR THEIR LIFE THEY TREASURED THEN

AND LIKE A WOLF AT BAY,
THEY SHOT THEIR WAY
THROUGH MOBS OF BLOOD THIRSTY MEN

FOR ONE THIN DIME AND HIS LAST CRIME
HE CALLED TERRY KAY AND TEE TEXAS TINY TEETER,
BE SURE AND PAY THEIR ELECTRIC BILLS
SO THE JUICE WOULD FILTER THE METERS.
HE WANTED THE SLATE, AND THE CRIME AGAINST THE STATE,
TO BE PAYED AS FULLFILLED BY FATE

The Lurker is printed at Vermont State Prison in Windsor, Vermont. It's entire contents are written by inmates of the prison. This is the December, 1972 issue. Our main purpose is to make people aware of what is going on in here. Every person in this country should be concerned about conditions in prison. Someday they might just end up there themselves. The time to do something about these conditions is now.

You may say to yourself,"it couldn't happen to me". Well it could. There are thousands of people who enter prison each year. Every day there are people coming and going. Counting the Correctional Centers there are about ten thousand people who enter jail each year throughout the state. Furthermore there are several thousand more who are arrested and charged who don't go to jail. If you have missed going to prison or jail you are just lucky. It is getting harder and harder to stay out of jail. Every day more laws are passed that could put you there. Your chances of not being arrested during your lifetime are very small. The jails are full of people who wish that they had been concerned about what went on in prison.

The state needs its' jails and prisons. They give work to a lot of Vermonters and non-Vermonters. Counting prison personel, court employees, judges, attorneys, clerks, city police,state police, sheriffs' departments, parole and probation departments, attorney generals' staff and prosecutors; it is by far the largest and most expensive part of state government. The public is paying for it all and the public doesn't give a damn how their money is spent.

Just to put me in jail cost you the public more than most of you make in a year. For an $85.00 bad check.The state can claim eleven thousand dollars from the public for holding me in prison for one year. It actually costs them about four or five hundred dollars to keep me here. What happens to the rest is something I would like to know. The public doesn't care, but I do. When the state officials can steal that much and get a pat on the back for it, I want in on that racket myself.

During July the Corrections Department submits its' request for money. The more people locked up the more money they get. So if you are going to break the law, don't get caught doing it during

cont next page

June or July. You will surely go to jail to up the body count. If people took note of how many people are in jails that shouldn't be there, they could save themselves many thousands of dollars a year. Since it is easier to take money from a large pile than a small one without the loss being noticed, they want to keep as many people as possible inside. If you doubt this, take the time to check out some of the people in prison and why they are being held and for how long. You will find the situation unbeleivable. Of course it is very doubtful if you will ever get to make such an investigation. There are so many people in the prison system taking graft that such an investigation would never be permitted. To get into all that would take too much time and since I must make the most of your money, so long "sucker".

John Shuttle
Editor

*******LEGAL COLUMN*******

Bernard Lochmansee

Editor

One of my jobs on this publication is to point out injustice and in some cases bring to light violations of the law. Most assured that my duty and responsibility to inmates and public will be met.

I have noted in weeks past, that the actions of the administration at W.C.F. are in direct violation of federal law. It is a flagrant violation, and were one of us confined here to act in the same manner, he would I'm sure be prosecuted. The same is true of any member of our society who was found to be selling United States Goverment Surplus Foods.

Yet each day of the year the prison adminstration does just that with total immunity. Butter, beans, flour and whatever else is plentiful is sold to employees and outside construction crews. Staff members on subistance allowances also receive this food and the cost is deducted from their salaries.

I as legal editor of this publication and citzen of these United States intend to bring this violation of Federal law to the attention of the proper authorities. Hopefully thereafter, this pratice will cease, and the food that is intended for our bellies to insure that our diet will be a bit better and will no longer be sold to the public.

One cannot help but wonder where the money from these illegal sales wind up . In who's Poke ? What politician is getting fat from the sale of this surplus food ?

The staff of the Lusarar and my-self ask your help in bringing to an end this shameful and criminal practice .

****

GRAND JURY INVESTIGATION

ONLY COPY AVAILABLE

It was reported in the news media on November 13, and 14 , that a request would be made of Governor Davis and Governor-Elect Salmon ; for the convening of A Grand Jury to investigate conditions at W.S.P. This certainly is a long time overdue.

The staff of this paper as well as the legal editior are wholeheartedly in favor of this investigation, and will give it their full support.

Hopefully the atrocities committed here at the prision will be brought to the publics attention.

I for one; will be grateful for the opportunity to unburden myself to this body. Too many years of observing cruelty to my fellow human beings without being able to stop it weighs heavily on my mind. Year after year I have watched young men and old, subjected to ill treatment leading in many cases to the destruction of mind and body. I have seen men die of neglect. I have witnessed the adminstration stand by idly while an inmate who's need for help was apparent to everyone, slowly deteriorated until there was nothing left but the Insane Asylum . When they could have extended a helping hand, they turned their back. Let them now answer for this .

by: Bernard Goodmanson

WHAT THEY'RE SAYING

Lt. Toomey: I'm sick of hearing about inmate's rights.

Mr. Basso: I can talk to a man once and tell if he is a Psychopath .

Dr. Shaw : He's a Psychopath.

Mr. Moeykens : No !

Guard; G. Sandborn : Get in your cell .

Sgt. Ryan: No interview .

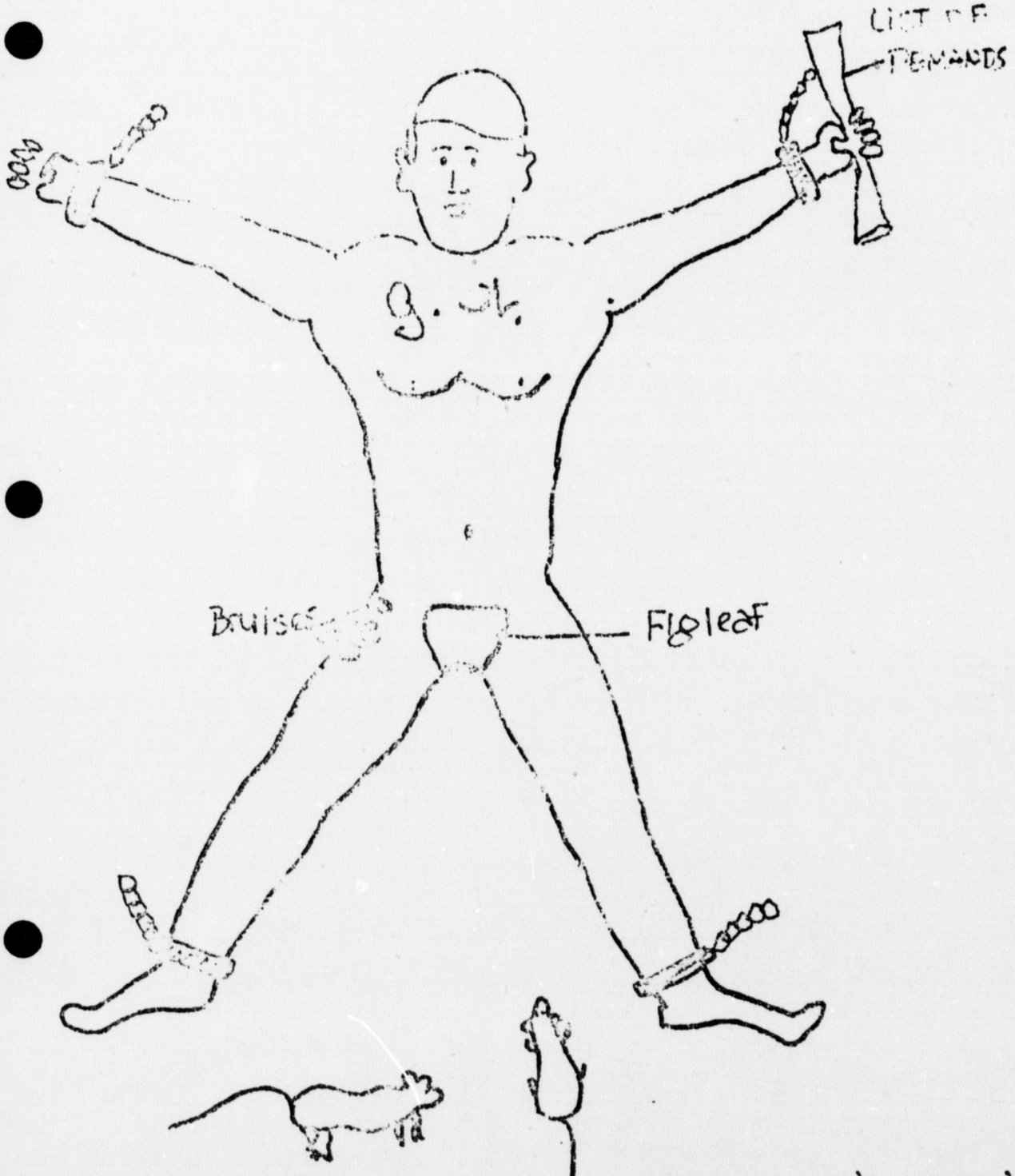
Guard Murphy : No credit and thats final !

Guard; G. Sandborn : Where, oh where has Willie King gone ?

Mr. Boggis : In that one cartoon you guy's ran the guy holding the needle has an awful big nose.

CONT. PAGE 34

Our cartoonist is in the "Hole".



I DONT KNOW WHY THEY CALL IT SOLITARY CONFINEMENT, SOMEHOW I JUST DONT FEEL alone!!!

MEDICAL SERVICES AT V.S.P.

by, Frank Berard

Do we have a hospital at V.S.P. or is it Seth Meads' private health club? How many men have we seen laying sick, cut up and bleeding in their cells, while hospital beds remain empty? Is there something wrong with a system that treats sick men as a discipline problem?

Answering the above questions should be laughably simple for anyone that has had the misfortune or poor judgement to get sick or injured while confined here.

Would be patients at the prison hospital are handled in one of the following ways, those that are able of making a return trip to their cells are handed a couple of asperin, then told to return to their cells where they are givin the opportunity to heal themselves through positive thinking, those that are not able of making the return trip are admitted to the hospital where they are watched for a period of hours and sometimes days to determine whether the ungrateful slob is going to remain uncooperative and stay alive, and lastly, lots of fine dope for those that will let themselves be conned into it. Tranquilizing drugs, which are supposedly supposed to calm and sedate the inmate-victim, but which actually turn him into a walking vegetable, therefore a"good" inmate. Some of these"good" inmates dont know whether their in prison or on Miami Beach, thats the way the administration likes it.

Not everyone however, is refused admission to the hospital. It is a time honored refuge for informers, cop-outs and asskissers. But if your sick, forget it baby! Crawl under your bed and hope for the best or let them dope you up and turn you into a vegetable. If your lucky, you'll turn into a carrot and can spend all that mindless time playing with that pretty green tassle growing out of your head.

F.B.I. Investigation

by louis bowers

On November 21st, 1972, two agents of the Federal Bureau of Investigation talked to 13 inmates of the Vermont State Prison. The agents had in their possession newspaper clippings of the hunger strike letter signed by 13 men in close security. They wanted to know exactly what went on after the escapes of August 26th. The full story, including what privileges were extended to us and which were denied. I assume that the administration was given equal time to tell their side.

I was one of the 13 called up by the agents. During our conversation, I brought out the facts as I knew them. Our civil rights were violated and I neither held back nor added any information to the facts. I told them of the administrations' refusal to inform us of why we were being treated in such a manner, their refusal to give us a chance to defend ourselves, the curtailment of visits, substandard food, lack of medical attention and denial of exercise time. I'm sure the other 13 called up corroborated my statements. I specificly stated my intentions of getting some answers <u>in court</u> as to what right the Governor and the Commissioner had to order arbitrary and unusual punishment solely on the basis of our records. I further demanded that a federal overseer be sent in to supervise a records check of the 26 men originally ordered confined in A block, and that the administration be made to show cause why these twenty six deserved the titles of militant, psychopath, agitator, and security risk.

The agents asked who wrote the hunger strike letter and I proudly admitted to being the author. I wrote it and I am ready to accept whatever comes behind it.

The proper administration of the prison should be the concern of those empowered by law to do so; but we are dealing here with an

NEXT PAGE

administration which is,in the words of a member of the legislature, "rotten to the core",(Kennedy, Daily Eagle, U.P. release). When these officials refuse to accept this responsibility there will always be some inmate,who regardless of the price he may have to pay, will make an issue of their negligence. We can handle it. Can they?

This publication, unlike so many other prison papers, doesn't make a practice of throwing roses, but to every rule there is an exception. Doc Halls' efforts as lay counsel for Carroll Perry during Carroll5' recent hearing before whateverthehell board it was that heard him,have earned for him the thanks of all of us who are aware of his efforts. He put in a lot of time and research and even though his efforts were in vain, he may have offset some of the mutual distrust and suspicion which is presently the only relationship existing between staff and inmates.

Luparar Staff

Its' rumored that one or two legislators will visit the prison each month to converse with the inmates. Don't know if its' true but if it is...lay it on em!

To Governor Elect Tom Salmon

Many of us here at Vermont State Prison are overjoyed at Tom Salmons' recent victory. None of us know him personally, nor do we expect from him an immediate solution to the monumental problems at Windsor; but we do feel that he recognizes the need for a solution. Hopefully our new Governor will find in the Legislature the neccesary support for a sensible reform plan.

Getting rid of R. Kent Stoneman might be good for openers. His reactionary methods are as antiquated as the buildings he oversees, and like the buildings must be updated or abandonned before the "Windsor powder keg" explodes.

A new Warden, one who can win and hold the respect and confidence of inmates and guards alike is a neccesity if anything is to be accomplished.

We want counselors who will answer our requests for programs with something more than mumblings and evasions. We would like to see an investigation of the Windsor facility undertaken by a citizens' committee composed of fairminded and unbiased people, and their findings made public. We want recognition of our rights as human beings.

We have no place to air our greivances except the courts and these pages, and as long as the Lumarer continues to publish we will air them!

We have many friends on the outside who in spite of the administrations efforts have kept faith with us in our struggle.

We would like to see the money spent to keep men caged used to make men better.

We invite Tom Salmon to come down here and take a look around, trusting that if he does, he will, unlike his predecessor, realize that something must be done about the Windsor "powder keg".

Louis Bowers
Associate Editor

"1 GUESS PROBABLY".

If you were to ask a Vermonter, say a man from the Northeast Kingdom,"is twelve thousand dollars a lot of money", he would most likely say:I guess Probably.

Well citizen, that is what it costs to keep a person in the Vermont State Prison. This twelve thousand dollar figure does not include welfare checks or costs of court. Some welfare checks for a prisoners' family run as high as $7,200 a year.

Do you taxpayers ever realize the extent of what it costs you to elevate a prosecutor into political prominence? Ask your local legislator just why the states' executioner needs $6,000,000 to run the farce known as the department of corrections. I hope you citizens have a big year while you're sugarin, milkin, and just plain digging out a living; because God only knows what it will cost you next year.

For those of you who do not subscribe to the Lunarar, and want the true story on your hired punishers, just send your name and address to The Lunarar, Box 26, Windsor,Vermont for a months' subscription. There is no charge. Any donation, no matter how small, gets you on the mailing list. If you're broke just send your name and address.

Billy Fox

That address is:
Lunarar
Box 26
Windsor,Vermont

When I hear your voice; inside
I die a little.....
When I hear your voice,sometimes
I cry a little..... .....
Memories return to me
of days that used to be
When I hear your voice, I have
no choice....
So... I cry a little.

George P. Tatro sr.

THE BLACK MAN COULD SAVE VERMONT

It seems that in states having a balanced population the working class gets a better break in equal benifits from government.

The black organizations that fight for laws to benifit blacks are also helping the white working class to elevate their status in everyday life.

Every town, village and gore in the State of Vermont must have a few black families located there in order to bring true "Americanism" to white racist Vermont.

As technical adviser for the Luparar, I am going to contact black leaders in every ghetto in the country to encourage black people to relocate in Vermont.

If we can put enough pressure on the Federal Government we can force the intergration of the state; and if we could sucessfulby relocate about 300,000 blacks within the state, the balance of political power would shift to the working class. Perhaps then the practice of railroading poor people to prison because they cannot afford a decent lawyer would stop, and prison reform would become an actuallity instead of a meaningless topic of conversation.

Once the black people in the ghetto are made aware of the fact that there are no black people in Vermont they will realize it is their duty to relocate a representitive number of their group within the Green Mountain state in order to insure racial balance.

I will keep our readers informed of the progress being made in carrying out this worthy project, and by this time next year I hope to be able to report that the first 100,000 blacks have moved to Vermont.

William Mayer


only if I get a zip in a C.C.
Now, Mr. Informer, would you please tell the jury what you know about this crime.
VEGETABLES
Oh! Boy! a couple of more convictions and I can run for State Office

Common sense and the prison

hassle

by, Louis Bowers

Want to see $500,000 poured down the drain? Take a walk down State St. in Windsor and eyeball the work crews busily trying to peice together the old Vermont slag heap. Once again the powers that be have opted in favor of the half-assed solution, patching here, shoring up there, putting up partitions here and knocking other partitions down, ignoring naturally, the logical solution of abondonment, Thats right abondonment! Everyone agrees that the old dump has to go, but if this is true, it seems to me that thats a helluva lot of money to be spending prettying up the corpse.

It has often been stated that there are only 30 or 40 men presently confined who must necessarily be kept in max security. That figure fluctuates between 15 and 80, depending how much heat is on the officials, but 30 is more closer to themark. Givin the fact that the state must maintain a max security facility it doesn't necessarily follow that it has to be here.

I'M not getting into the disposition of those other than theones chosen for max security. It is assumed that these others could be placed in correction centers, special treatment facilities in thecases of drunks and dopers, or on parole. Those few remaining, those who fit in the catorgories of "hardcore", "sociopath", "chronic offenders" and other bullshit terms so dear to the hearts of those who direct this excercise in futility, even these will someday be released and the conditions in which they spend the rest of the months and years of their confinement will determine to a large degree where they go from here.

Were it in my power to do so, I would, after the weeding out process, transfer the remaining men to the state farm, where 1500 acres of land are available andnot being utilized. I would take Walkskill prison in New York State. Lifers live in dormitories, picnic on the picnic grounds, and are givin meaningful work. Sure, they're still in prison, make no mistake about that, but the dehumanizing effects of bars, cages, and concrete walls are kept to a necessary minimum, and the effects of treating men, even imprisoned men, as human beings rather than animals is reflected in the low ratio of escapes and recidivism.

The concept of prison is retribution, prison as socities instrument of vengence is as deeply rooted in tradition as any of our more democratic societies and institutions. It is a tough nut to crack but it must be cracked. "The crime of punishment", as Dr. Maninger states, "leads only to further crime leading to punishment leading to crime and on and on and on"..... If the chain is to broken, it must be broken at it's weakest link, the max security prison and it's obvious future for failure.

The following changes in the movie schedule have been made:

Dec. 23.. A man called Sledge

Jan. 27.. Big gun down

Feb. 3... The Executioners

Unavailability of certain films may neccesitate further changes.

REWARD REWARD REWARD REWARD

Since many inmates have reported sending their personal laundry on a one way trip, The Luparar is offering a two carton reward for the apprehention of the "Phantom shorts snapper", last seen lurking around the laundry. Should the culprit turn out to be a guard, the reward will be upped to three cartons.

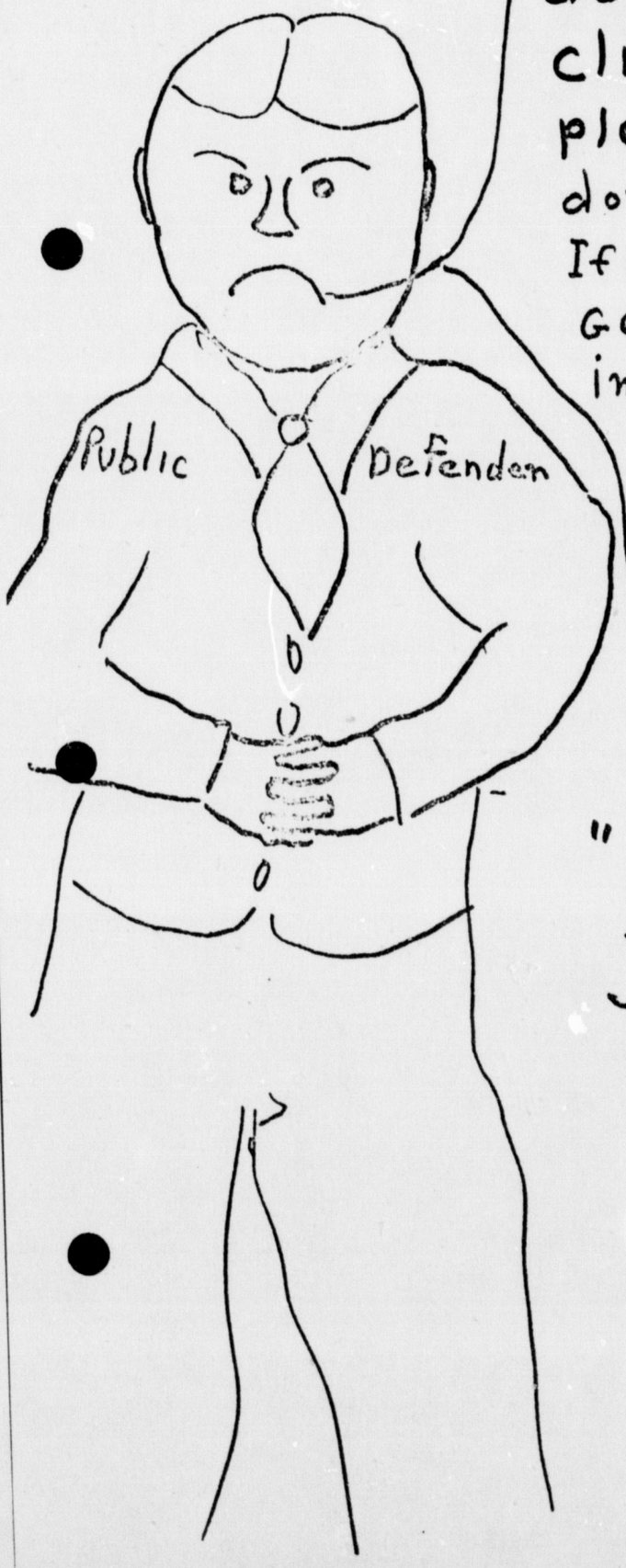
Report on the small appliance repair class by, Lawrence Hakey

For several weeks now some residents, including myself, have been attending the small appliance repair classes. These classes are taught by Mr. Les Wright of Springfield Vermont.

At first the course had some trouble getting off the ground and some participants became discouraged with the whole thing. Mr. Wright was called upon to teach this course with the understanding that the class would be fully equipped When we started classes, we found a few books and tools and not much else. The warden and a few others donated some odds and ends that needed fixing. Mr. Wright made an appeal for appliances that needed repair, but it has become apparent that people would rather throw these things into a landfill, than let us use them to gain the knowledge and experience needed to get our completion certificates. But in spite of this we're coming along, and we hope to get in the near future some correspondence courses covering T.V. and radio repair, refrigeration and similar subjects.

If you are interested in this kind of education, this will probably be the only opportunity you will have to get in on it. Trying to get a course out of Mr. John Carr of Voc. Rehab. is like trying to pull teeth from a rooster. I've been trying for six months now and all I've gotten is a lot of excuses such as "prove you can do it and we'll get it", or " I'll see you next week ". Months later it's still "see you next week", so if you are givin the oppertunity to take Mr. Wrights course, do take it. He is a very competant instructor , and due to his help I have been quite successful in making the few repairs I have attempted.

The staff has been cooperative in letting me repair things, andfor this I am grateful. I would not have made it except for the help of men like Mr. Wright and Mr. Orlando Tussler.



"With Liberty and Justice for All."
(That can afford it)

STONEMAN AFRAID OF PROBE

??????

The above is the title of a U.P.I. news release by R. Kent Stoneman, Vermont commisioner of Corrections.

We wonder why Mr. Stoneman did not place all the facts before the public shortly after the April 24th escape. That night he was making a speech in the town of Windsor, and was here on the scene shortly after the escape took place, and was shown the torch that was used to cut the bars. How the torch came to be where it was, where the escapees could use it, was never fully explained by Mr. Stonemans Dept.

The prison has never been open to the publics' scrutiny. Even attorneys armed with Federal court orders were denied access to the cell blocks. An attorney sent here to investigate the merits of a writ charging that the segregation unit was a firetrap, could not get past the acting warden, Julius Mooykens, and the Attorney Generals asst. Bristow.

Mr. Mooykens policy of either repressing or ignoring any action that might present to the public an unbiased view of the conditions within this prison are reflected in the low morale and alienation of the prison population. Over 75% of the inmates signed a petition that he be givin a psychiatric examination. They want him out and the sooner the better.

Since Mr. Hudson operates in close cooperation with the very people that could be exposed by a Grand Jury investigation, we believe that he will squash or cover up anything that will put them in a bad light.

Nothing is done to cover up the actions of the inmates. If they break the law, they can expect a trip to court, and if they violate any of the rules of the institution, they are punished. The departments of the state government are not above the law, nor are the people in these departments immune to investigation, and when necessary, prosecution. If the Grand Jury scheduled to investigate the prison doesnt stick to an impartial view of the facts, if they do not expose the abuse of athority and out and out disregard for the law that they must find here, then they are no better than other "de facto" painting companies brought in to apply a liberal coat of whitewash where most needed.

J. M. Shuttle

OUR FIGHT MUST NEVER STOP!!!

The prison system of Vermont is so bad that if you need better food you have to riot. The warden here isnever seen by the inmates because he fears that we will ask him questions that he cannot answer. The prisoners in Viet Nam have better living conditions than we have. We do not have hot water in our cells so even in wintertime you must wash yourself with cold water. If you want to take a shower you are told to wait. Showers are taken only two days a week, and if the guard starts the shower call late, and you miss out, you have to wait until the next time. The warden, Mr. Moeykens, does everything he can to keep the inmates and guards in some kind of rut. The commisioner makes all kinds of promises and never follows them up. I was told after the escape at St. Albans that I would be one of the men that would talk with the commisioner. I was told that no changes would be made, but all passes were taken from men that had worked very hard to get them. He would not answer any questions that would make his office look bad. The meeting was worthless, this man would only talk about what the newspapers were saying. It seems that his office is very popular when it comes to tracking down corruption, and this is what the newspapers try to tell the public.

After the escape at Windsor, the warden was given thirty days sick leave, and a new job in the commisioners office of corruption. His new job is to cover up the Grand Jury investigation so the people of this state will not know how their tax dollars are bieng thrown away. This prison, which is 163 years old, is the oldest in the nation, so you can see how far behind the rest of the country the corrections dept. of Vermont is.

The commisioner has appointed Mr. Moeykens as Acting Warden, this man is nothing but a moron, and we as inmates have to live with this kind ofcorrections system. There has to be a Grand Jury investigation, and soon. This is the worst system in the United States, and it must be changed now.

The only way to fight this system is through the courts. We have won alot of good decisions in the courts, so let's keep them full of writs and change the laws that need changing. Remember all the brothers that have died for a better system.

Michael Marathon

November [illegible], 1972

Dear Friend,

We are a core of people who have become involved at the Windsor State Prison. It began one Sunday about 2 months ago when, [illegible] with John Schuchardt, a Brattleboro attorney, we kept a vigil outside of the prison, fasting, praying, thinking. Our intentions then, were simply to let the men inside know that we had become aware of their situation; to bring and share our support, strength and love. Needless to say, it was a very intense experience; we have been there every week since then. We've been focusing on learning as much as we can about the prison- on breaking through the silence which has, for too long, shielded us from the atrocities of prison life. We have spoken with guards, with the warden, the director of treatment, and we correspond and visit with inmates. At one time, we didn't know where to begin; now we are overwhelmed, constantly realizing all that <u>needs</u> to be done and that <u>can</u> be done.

There will be a meeting, Monday nite, November 13th, at 7.00 p.m. at the <u>CLARA BARUND RESTAURANT</u>, 25 Elliot st. (upstairs), in Brattleboro. Members of the vigil group, Kit St. John, (an initiator of the Prisoner Community Center in Windsor), and an attorney will be present. We ask everyone and anyone to come who would like to join us in directing our actions so that we may become a strong and useful unity.

"Meetings and group organizations are all right. They are of some help, but very little. They are like the scaffolding that an architect erects- a temporary and makeshift expedient. <u>The thing that really matters is an invincible faith that cannot be quenched".</u>
(Mahatma Gandhi)

Yours in faith

Theresa Kay
Box 80, Marlboro, Vt.

Keep plugging Joe, it is unfortunate that some people can be so un-educated in the awareness of other human beings.

City Kiwanis Club Members Make Light Of Effort to Rehabilitate Prisoners

By WAYNE CROSIER

A former prison inmate was greeted with scoffs and hoots of derision when he told local Kiwanis Club members Monday that prisoners deserved a chance to be rehabilitated.

When Joseph LaPlaca, ex-convict and director of the counseling group BRIDGE detailed to Kiwanians that the purpose of the counsel organization was to show prisoners some trust and give them a chance on the "outside," one Kiwanian just grunted.

Another Kiwanian answered that prisoners were in jail to be punished, and don't deserve rehabilitation.

After the remarks by the Kiwanians, LaPlaca told them that even though they didn't care to listen to him, he had to request money for BRIDGE from them. He said the Kiwanians could also help by hiring ex-convicts.

When LaPlaca finished explaining what BRIDGE entailed and what help the organization needed, he asked for questions, and in the comments that followed, no one Kiwanian spoke favorably for BRIDGE, whose stated aim is to cut back on the number of criminal repeaters.

LaPlaca explained that 60 per cent of all crimes are committed by repeaters, and so it's obvious that the system of locking prisoners in Windsor State Prison and forgetting them is a failure.

Atty. John J. Welch Jr., who introduced LaPlaca, told the Kiwanians that sociologists and psychologists have proven that organizations such as BRIDGE cut down on the number of crimes.

LaPlaca put forth the example of himself, who has been in prison for passing bad checks, he says, so he could buy booze. Now, he adds, thanks to someone outside the jail who really cared for him, he has gone straight.

BRIDGE, separate of the state, and state and federal funds, will work with prisoners up for parole by trying to land them work, a home, or just friends.

BRIDGE is made up of ex-convicts, lawyers, and others interested in the rehabilitation of prisoners in Windsor and Detroit Counties. The group believes prisoners haven't been given enough chances. Several Kiwanians indicated they believed prisoners have been given too many chances.

The director of the rehabilitation group related how he has met police resistance. He said he was in court with a prisoner, and a state policeman stepped up to him and said, "As fast as we can get them in jail, you bastards get them out."

In general, LaPlaca said, public officials and parole officers have cooperated with BRIDGE in order to give prisoners a chance to make something of themselves.

Welch noted that rehabilitation doesn't always work, but he said that no person or organization can be perfect and the present system is surely not a success.

To this, one of the Kiwanians remarked, while eating his supper as LaPlaca was trying to speak, "When are you going to stop babying these criminals and give them what they deserve; punishment." He claimed that criminals have too many defenders already and have just gained another with the advent in the state of the public defender.

Welch answered that none of the prisoners are ever babied, just treated like human beings, whereupon the Kiwanian said, "If a prisoner can't find anything for work when he gets out of jail, let him start a license plate factory." LaPlaca did a turn-about to this remark.

LaPlaca told the Kiwanians he believed they didn't want to give anybody a chance. He said convicts have a reason for committing a crime and BRIDGE is in existence to take this reason away by trusting and working with the prisoner, not kicking him.

Welch made a final request for donations for BRIDGE. He said if the group doesn't get the fund, it will die. But no donations were made.

I shall pass through this world but once. Any good therefore that I can do, or any kindness that I can show to any human being, let me do it now, let me not defer of neglect it, for I shall not pass this way again.

by: Henry Drummond

SUPPORT " BRIDGE "

CONTACT JOSEPH LaPLACA

Windsor Prison, safekeeping. An
incommunicado set-up.

Under the news laws put into effect last July, all persons ordered h eld for trial and uanble to pr ovide bail are remanded to the Commisioner of Corrections for "safe-keeping". He alone has the athority to designate where that person shall be kept while awaiti ng trial. He, alone can decide that an accused but not convicted s[illegible]duled for trial in lets say, Burlington should be removed to the Windsor facility for s afekeeping.

Lets say that you are accused of a crime in the Burlington area, arraigned there ,and bicng unable to raise bail a t once, are confined in the correction center. The question of innocence or guilt doesn't even enter the pictor since innocence must be presumed in all cases. Why then, in spite of the intricate system of judical checks and balances, the courts highly touted regard for your Constutional and Civil rights,and both State and Federal Statutes prohibiting pre-sentence punishment ; are you setting there in jail ?

The answer should be ovious. You are guilty of the crime of poverty, a crime punishable by indefinite incarceration, loss of income, irrepairable damage to your reputation,and as oftenas not the loss of friends and family. Since you are unable to buy back your life by raising requisite bail. it i s apparent that you are guilty of one or more of the following offenses .All punishable under the time sanctioned safekeeping statutes, lack of opportuinty, lack of education. No ambition or initiative and no faith in the fee enterprise system. Your empty pockets are damming ev idence of your general un-trustworthiness and probable guilt. You are subject to the same tender ministrations accorded your fellow inmates, most of whom are undergoing a s punishment what you bear as misfortune.Some solace, eh ! You could be sumarily executed by some aborigine employed as your

Note: Please except our apoligies in the roughness of this issue; Due to typing problens .

****

keeper. The courts of the land no longer have the power to sentence a person to death, but some half-witted sadist still has the authority to try, sentence and execute you in the length of time it takes to draw a weapon, should you escape or attempt to escape.

So there you are, being kept "safe" for your day in court. Cheer up. Things could be worse. You can still receive visits, consult with your lawyer, maintain contact with friends and family and prepare your defense. You have access to a telephone to use for raising bail.

Then one day the Commissioner excercising the power granted him and only him, decides that you are not "safe" enough in the Correction Center and orders your transfer to Windsor, a prison notorious for its' "safe" conditions. There you will be kept so goddammed "safe" that you will feel buried. By this time of course, the question of your guilt or inocence is irrelevant since the cumulative effects of long imprisonment, loss of contacts and suppressed rage and frustration have caused you to cop a plea, go insane or add new charges to those already pending.

At one time only the Governor could order a pre-trial detainee transferred to the state prison. His authority to do so was questioned and revoked, only to reappear as the prerogative of a lesser official.

The whole safekeeping concept stinks to high heaven and the fact that it is practiced in all 50 states doesn't change this. If pre-trial imprisonment is a burden to be borne by the poor, which it obviously is; then it must necessarily follow that the confining authority do everything in its' power to offset the deprivations both legal and social rising from this detention. This has never been the case; and when one man is given the authority to intensify the sufferings of these supposedly inocent people by confining them to a maximum security prison where they must await their trials in an institution where neglect, indifference and callous disregard of their

cont next page

NOTICE

Yoga classes every Monday, 3-4p.m.
in the chapel.
Those interested in attending see
Swami Bowers.

basic rights await them at every turn; then brother, not just the courts, not just the prison system, but you and I , the guy next door and everyone that votes in the state of Vermont stand condemnned as conspirators and accomplices in punishing the poor for their poverty.

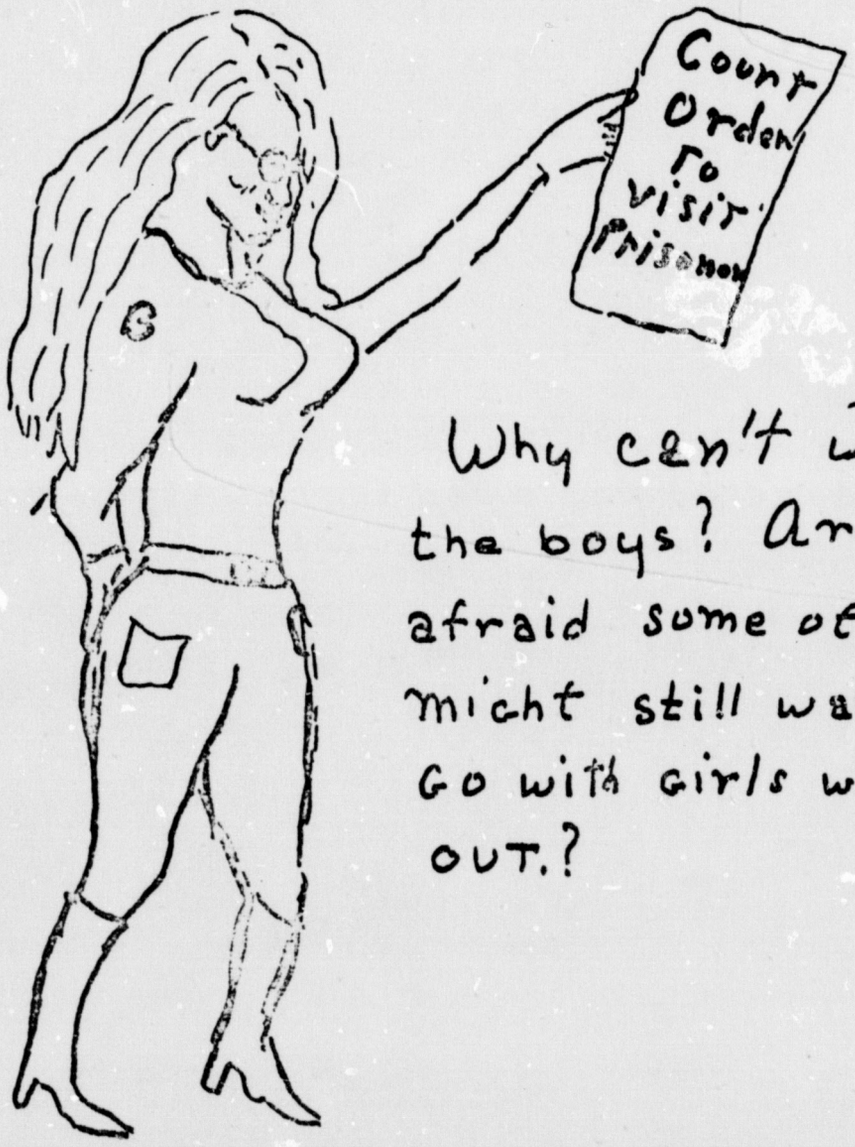
By: Ray Rabideau

BEING HUMAN

BEING HUMAN, I am weak, Iam weak
in will, weak in purpose, weak in faith.
BEING HUMAN, I am lonely, I am lonely
for human comradeship; I am lonely for
spiritual companionship; I am lonely for
divine company through life.
BEING HUMAN, I am insufficient. I am only
partly adequate; only partly realized;
I am only partly become.
BEING HUMAN, I lack confidence. I am
consumed by doubts; I am harassed by
fears; I am staggered by the weight
of responsibilities.
BEING HUMAN, I must work. I cannot work
well without ever present help; I cannot
work well without values not based on
money; I cannot work well without regular
renewal of visions of greater attainments
yet possible.
BEING HUMAN, Iam frightened. I am
frightened by my own weaknesses; I am
frightened by my responsibilities;I am
frightened by any tomorrows that I
might have.
Where do I find a safe hiding place?

submitted by
Betty Nance

a man a friendly visit.



Why can't I visit the boys? Are you afraid some of them might still want to go with girls when they get OUT.?

S.A.U. GANGSTERS ARE NOT HUMAN BEINGS. Don't you GIRLS KNOW THAT.?

Just ask the Acting Warden. He will be glad to tell you.

WHAT HAPPENED TO ROY GIROUARD ?

At the end of August, 1972, 17 men were put in A Block for security reasons , or so the officals said. They were not told why they were put there untill serval days had passed.

Because some were pre-trial detainees being held for lack of bail, they were removed after ten days and returned to C-block.

Roy Girouard,one of those remaining in A-Block,cracked up on September 1 . He went berserk,smashing and tearing up everything and cutting him self badly in several places.

I don't know what caused Roy to suddenly go bananas, but I do know since I was on the scene and aware of all thattranspired , of the callous and negligent manner in which Roy's injuries were treated. After a spot check by the prison nurse, Roy was left spaked, torn and bleeding; without water of toilet facilities , in a state of total mental collapse fpr two days. I personally stopped Father Haskins, who has since left the prison and told him that unless a Doctor was brought to attend Roy the reat of us on the block would raise so much hell they would have to get one. A Doctor was brought in finally, Roy was taken to a hospital,patched up and brought back and placed in the segregation unit once again. There he set. His mind unhinged, and his injuries unhealed until at the expiration of serval more weeks he was finaly taken from the segregation unit and sent to the State Mental Hospital, where hopefully something is being done for him.

The above is just an example of what went on in A-Block special segregation unit, a unit set up by the prison officalsin atmosphere of hysterical re-action that followed the August escapes.

Those of us confined in this section had to resort to threats,hunger strikes, Court actions and smuggled out letters in order to procure even the mininum needs of human existance. An attempt was made to force tranquilizing or sedative drug's upon some of the men, these drugs to be administered forcibly if necessary. This was discontinued only after several of us threanted all concerned with legal actions.

The A-Block unit was closed by order of the Secon Circuit Court. This same Court returned to the men now being held in the

re-located segregation unit, many of the privileges so arbitrarily taken from them. They still spend twenty three hours a day in their cells and they are still subject to slow mental deterioration which accompanies such confinement, but they now know this: that someone cares, that no matter how deep they are buried there are Judges, lawyers, social action groups, private citizens, fellow inmates and -yes, even guards, who will hear and heed their cries and what is more important- do something about it.

Louis Bowers

MAPLE LEAF FARM

Underhill Center, Vt.
11/17/72

Dear Sir:

Will you please give me the definition of Luparar?

Thank you for sending the Nov. issue of the mag.

The offer of weekend visits to the farm is still open, if and when the Warden o.k.s the offer. *

Yours Truly,
Ralph W. Breton
Mgr.

* Maple leaf farm is a rest and recuperative facility run by Alcoholics Anonymous, but not neccesarily restricted to their membership. Ed.

TESTIMONY OF REV. SAMUEL FOUNTAIN, CHAIRMAN OF THE MINISTRY TO INSTITUTIONS COMMITTEE OF THE VERMONT ECUMENICAL COUNCIL AND BIBLE SOCIETY BEFORE THE LEGISLATIVE STUDY COMMITTEE FOR CORRECTION.

FOR RELEASE OCTOBER 30, 1972

On December 6, 1971,,Richard M. Nixon, President of the United States, declared,

> At long last, this nation is coming to realize that the process of justice cannot end with the slamming shut of prison gates.
>
> Ninety-eight out of every hundred criminals who are sent to prison come back out into society. That means that every American concerned with stopping crime must ask this question: 'Are we doing all we can to make certain that many more men and women who come out of prison will become law abiding citizens?'
>
> The answer to that question today, after centuries of neglect,is no. We have made important strides in the past two years, but let us not deceive ourselves: Our prisons are still colleges of crime, and not what they should be--the beginning of a way back to a productive life within the law.
>
> To turn back the way of crime, we must have more effective police work, and we must have court reform to ensure trials that are speedy and fair. But let us also remember that the protection of society depends largely on the correction of the criminal."

If we properly understand these words of the President, he is telling us that the basic attack on crime prevention lies not in police work nor the courts, but in the corrections systems. We must be careful not to overstate this case, corrections is not the total answer, but it is central and vitally important to the reduction of crime and the reintegration of convicted persons into their communities.

The question before us at this time is how to best "correct" those people who have violated the rules of society and alienated themselves from their neighbors? Can the answer be found in a dedication to buildings and grounds? Or, are they merely supportive of a wider and vastly more important program of people?

The United Nations made a devastating study of prisons and their relationship to crime. The U. N. study demonstrated that there is a direct relationship between money spent on prisons and the rate of crime. The more spent on buildings, the higher the crime rate. This conclusion was not drawn by a few isolated statistics, but by world-wide figures comparing all of the member nations. Interestingly enough, the United States invested more in buildings and had a resulting higher rate of crime. Denmark who invests the least in buildings had the lowest rate of crime.

Two weeks ago, Mr. T. Wesley Grady testified before this committee that Merle Alexander, Director of the Federal Bureau of Prisons had completely reversed his 40 year position on corrections as a result of this U. N. Report

According to the Vermont Department of Corrections 84.6% of incarcerated persons are recidivists. This fact is appalling. It means that we have failed: that corrections have not corrected.

From a report published by the Christian Science Monitor: "Criminologists universally indict U. S. Prisons systems for doing little to change this cycle (recidivism). " Prisons, they say, do not reform, deter, or rehabilitate.

Hans W. Mattick, director of the Center for Studies in Criminal Justice at the University of Chicago, says:

> "Prisons isolate and incapacitate. We have contradictory expectations of them. Simultaneously we expect them to rap a man alongside one ear while whispering reform to him through the other. We call this rehabilitation? You don't train aviators in a submarine. Indeed, in proportion that a man adjusts himself to prison life he unfits himself for any other life on the outside."
>
> Carrol Payman, a black psychologist who works with prisoners in the California system, says: "The most telling point of all about correctional institutions is that they can't correct. They are run on contradictory concepts. When men and women are prodded at the end of a stick or a gun, there can be no rehabilitation. The agenda is survival, period."

Today, Vermont is in the process of building bigger and better prisons. We are attempting to house more prisoners in an honest effort to bring them back to society as creative and useful citizens. Yet, it has been proven that walls do not cure the cancer of crime, they intensify it. No one doubts that there are some who must be locked up for a time to protect society, themselves, or both. Governor Deane C. Davis has publically stated that there are no more than 25 or 30 who qualify for this punitive action at any one time.

We are building larger buildings to diagnose men so that they can be rehabilitated, yet can we adequately diagnose when that person is totally removed from the environment which caused his criminal act? We are adding cells that must be filled, or the taxpayers will protest that we have wasted money. We are expanding a system that has proven itself a failure.

It is our contention that successful corrections lie in the Probation/Parole programs, and that cells are useful only as a final resort in isolated cases. Even then, considering that most convictions return the person to society, cells are only useful for a short period of time.

We, therefore, make the following recommendations:

1. The planned, or begun construction of the additional wing at St. Albans be stopped.

   Rationale: Is it genuinely productive to the cause of corrections? This question has not been adequately answered. There are alternatives that seem more likely to succeed with the proven success of Probation and Parole. Further, it uses funds that can be better utilized elsewhere. Our penalty loss to a construction company certainly cannot amount to the savings possible by a redistribution of funds.

2. Establish the Corrections Board as the supreme body or agency of the Department of Corrections under the following guidelines:

   a. The Commissioner of Corrections shall be responsible to the Corrections Board.

   b. Basic Departmental policy must be approved or originated by the Corrections Board within the legal guidelines established by the Legislature.

   c. The Corrections Board shall suggest and recommend proper legislation to the Legislature of the State of Vermont.

   d. Membership:

      1. The Commissioner of Corrections shall be a member without vote.

      2. The Vermont Bar Association shall nominate two members from its membership.

3. The Institutions Committee of the Vermont Legislature shall nominate one of its members.

4. The other members of the Corrections Board shall be nominated from other organizations throughout the state such as: League of Women Voters, Friends of Rehabilitation, Police Benevolence Board, Vermont Ecumenical Council, and at least one ex-inmate who has successfully adjusted to life within the Vermont community.

5. The Corrections Board shall be self-perpetuating so that its membership shall be complete (as set by the final determination of membership) in that each representative group shall nominate any vacancies from its ranks. No members shall be appointed by the Commissioner of Corrections or the office of the Governor of the State of Vermont except as stipulated below.

6. The ex-inmate member shall be elected by the other members of the Board upon the nomination by the Department of Corrections of five qualified ex-inmates.

Rationale: The policy of the Department of Corrections changes as rapidly as the Commissioner. There can be no continuity or effective long range planning without continuous leadership. It has been demonstrated in our nation's history that the Department of Defense be controlled by civilian authority. We believe that the Department of Corrections must have civilian control for essentially the same reasons. Professionals who have spent their career lifetimes in the field of corrections tend to become ingrown, hire those with similar philosophies and become content with their acknowledged expertise. Creative ideas require sounding boards and thoughtfully concerned people with differing perspectives. An advisory board selected by the Commissioner has no authority, and, worse, can become an instrument of the Commissioner's office. This is seldom intended, but it does happen.

Further, we need broader input into correctional concepts, and closer ties with the various communities.

3. Expansion of the Probation and Parole programs:

a. More Probation and Parole officers with professional backgrounds.

b. Development of "counselors" to assist on a full time basis.

1. Counselors would be under the direct supervision of an officer, perhaps two counselors for each Probation or Parole Officer.

2. Counselors should be successful Parolees where possible.

3. Counselors do not need the extensive training of Officers

4. Caseloads should be limited to ~~35-40~~ 20-25 persons.

Rationale: 35 is the maximum load that an Officer can effectively handle, however, if we are to rehabilitate more offenders outside of prison walls, the caseload must be reduced even more. Counselors are not able to handle the same size case load as an Officer, and since Officers must supervise the Counselors, the Officers caseload must be correspondingly small.

Counselors, having experienced the problems of incarceration and community reintegration, can better relate to many of the "clients."

We now spend between $9,000.00 and $13,000.00 per inmate in the institutional setting. Parole costs are presently closer to $400.00. If we considerably increase the Probation and Parole structure we will certainly increase the costs to as high as $1,000.00, but this is still considerably less than the cost of institutionalization.

Probation and Parole have been found to be the most effective methods to successfully put an offender back into his community.

With a radically increased Probation and Parole structure, much of the work now being done in Community Correctional Centers can be handled in this more successful method. It means that much greater

supervision must be available and the Probation and Parole system adequately increased provides it.

4. Education and Training should be expanded and rethought so that there is a relationship between rehabilitative training and job opportunity.

   a. The State Board of Education and the State institutions of higher learning should be active partners in the retraining and education of offenders.

   b. The State Employment Agencies, also, should be a participating partner in the rehabilitative process.

Rationale. The Board of Education can provide the technical knowledge and equipment necessary to broaden programs presently offered. Such things as the manufacture of license plates are counter-productive to rehabilitation. It is monotonous work that cannot lead to creative employment beyond the prison system. It should be abolished.

Further, if the State Employment agencies are a partner, then the job market can be measured to coincide with the training being offered. There is a print shop at Windsor which can provide training for employment, but how many printers can the State absorb before we are training men for unemployment?

5. Except for extreme crimes against people, the Legislature should mandate that no minimum sentences be imposed by the courts but that maximum sentences must be imposed.

Rationale: The minimum time to rehabilitate a person cannot be pre-determined and the correction system must be free to return to society any person who is ready by adequate change of attitude and adequate employment. We should think in terms of how soon we can free a person, not how long we can hold him.

6. Except for capital crimes, a minimum length of time a person can be incarcerated pending trial should be specifically set.

Rationale: Most of those who are held for lack of bail are just poor, but not a greater criminal than a person with the financial resources to pay. At the same time, we are filling our "lock-ups" and correctional centers with high risk persons without proper justification, running up costs, and, perhaps, excluding from the correctional center's program a worthy prospect.

7. These last two proposals deal with the specific problem at hand and are designed to demonstrate viable alternative possibilities.

a. Reconstruct the St. Albans facility to a maximum security unit.

Rationale: It is ideally located away from any population center and can be readapted at minimal cost. Further, the time necessary to alter it is far less than a new building.

Windsor is a fire trap with inadequate exit for the population in case of a major fire, and since fire is a continuing problem, this must be considered. The cell blocks at Windsor are dehumanizing pathetically small and oppressive, and Windsor cannot be expanded as further needs arise because of its location within village boundaries.

Time is a factor. The quicker we remove the population the better off we will be. To construct an entirely new facility demands the elapse of about two years. Do we truly have this much time?

b. Add the diagnostic and treatment center to the Burlington Correctional Center presently proposed as a separate facility with a common roof.

Rationale: This locates the diagnostic and treatment center near the population base where most of the convictions within the state occur. In addition, it will permit the mutual use of services and personnel to reduce continuing operational costs, while removing the maximum security unit physically from the other correctional facilities.

In conclusion, we must remind ourselves that we cannot plan new buildings without an adequate philosophy for their use. At the same time, we must not plan buildings to house the present population unless we are willing to perpetuate a system that has proven a failure here in Vermont and throughout the world. On the cover of the March 1972 "Christopher News Notes" Ronald Bell, a prison chaplain writes:

a prison is not brick
and mortar
and ironbars...
it's flesh and blood
and iron bars.
jail is really people.
it's an 18-year-old boy
who's AWOL
from the marines.
it's a 19-year-old girl
who's pregnant, unmarried
and has run away from home
and parents she feels
don't love her...
it's a big,
6-foot-2-inch guy
whom most people fear,
but in counselling
he breaks down
and cries like a baby--
because he's lonely
and fearful...
a prison is people.

Please, let us never lose sight of that. Prisons are not a construction problem, but a people problem. If we do not work with people, correct people, then we have failed. Yet, we dare not fail.

[illegible] ; cont. **********

[illegible]: They didn't have to use a torch .

[illegible] fiction Board : I. L. D.

[illegible] tomman : My department hasn't got a thing to hide .

COMMISSIONER OF CORRECTIONS
KENT STONEMAN

DIVISION OF ADMINISTRATIVE SERVICES
DIVISION OF PROBATION AND PAROLE
DIVISION OF RESEARCH AND PROGRAM EVALUATION
COMMUNITY CORRECTIONAL CENTERS
LAKESIDE CENTER
CORRECTIONAL DIAGNOSTIC TREATMENT FACILITY
VERMONT INSTITUTIONAL INDUSTRIES
STATE CORRECTIONAL FACILITY
WEEKS SCHOOL

STATE OF VERMONT
AGENCY OF HUMAN SERVICES
DEPARTMENT OF CORRECTIONS
STATE OFFICE BUILDING
MONTPELIER, 05602
TELEPHONE (AREA CODE 802) 828-2452

December 1, 1972

Liaison Committee
State Correctional Facility
Windsor, Vermont 05089

Attention: Mr. Julius V. Mooykens
Supervising Officer

Recent Queries Concerning Inmate Wages

Gentlemen:

There have been a number of recent inquiries about payment of wages to inmates, including a letter from John Shuttle, editor of The Luparar. The following information is provided as an attempt to clarify the Department's position on such wages.

As a matter of background, regulations under which the present pay rates of 10 cents per hour and 15 cents over 40 hours were issued April 27, 1967. Upon passage of new legislation last July, I advised Warden Smith that those regulations were to be continued for the time being. Since that time, we have been collecting material on inmate wages in other states, and Allen Miller, Supervisor of Industries, has been trying to develop some alternatives to improve the Industries situation on both short and long-term bases.

As a general principle, we feel that all inmates assigned to regular jobs should be compensated, whether employed by Institutional Industries or on other assignments. We also feel that compensation should be more than token payment. Unfortunately, there is not much that can be done on either score at this time.

I am sure you are all aware that the only source of money for inmate wages is through the productivity of Vermont Institutional Industries.

Further, payment from these funds is legally limited to those inmates who are directly employed by Vermont Institutional Industries. The Industries program must be entirely self-supporting, and there has historically been very little profit margin. In addition to these limiting factors, the Department seems to have reached a watershed of sorts in reference to the future of maximum security in the State of Vermont. The basic questions which have yet to be answered include the following:

- what will be the nature of a new institution in terms of its program and the relationship between Industries and treatment programming? Even more fundamentally, will Vermont Institutional Industries have any role to play in the new institution?

- what will be the attitudes of inmates toward institutional employment?

- will the rehabilitation costs and start up cost for industrial programs be feasible?

- will the relatively small size of the new institution simply prohibit or severely limit the development of traditional industrial program approaches?

These are all fundamental questions which must be carefully considered and answered to everyone's satisfaction before any solid program can be developed. At this stage no one can even be sure of the size and location of a replacement for Windsor, although it appears this will be resolved in the upcoming session of the legislature.

On the very pertinent point of present wages, I have held serious discussions with Mr. Moeykens and the people responsible for Institutional Industries. We feel an interim program is possible which if successful could go a long way toward helping to answer some of the questions posed above.

Given the current profit level of Industries, we feel that a new wage of 33 cents per hour could be paid to those working in Industries. This would eliminate overtime pay, but would offer the advantage of providing employment in Industries for more inmates. The new wage could be initiated by the end of this month. The effects of these changes will be evaluated in approximately six months and hopefully will give an indication as to future expectations of the Vermont Institutional Industries program.

I hope that when that review takes place we will not have developed a deficit that would require changing the wage rate.

It is the Department's opinion that the Institutional Industries operation could employ many more persons resulting in increased production and profits if there were a marked improvement in work habits and general

responsibility of those inmates in the work force. The long-term results would be a greater potential for higher wages and an increased investment in a fundamentally sound program.

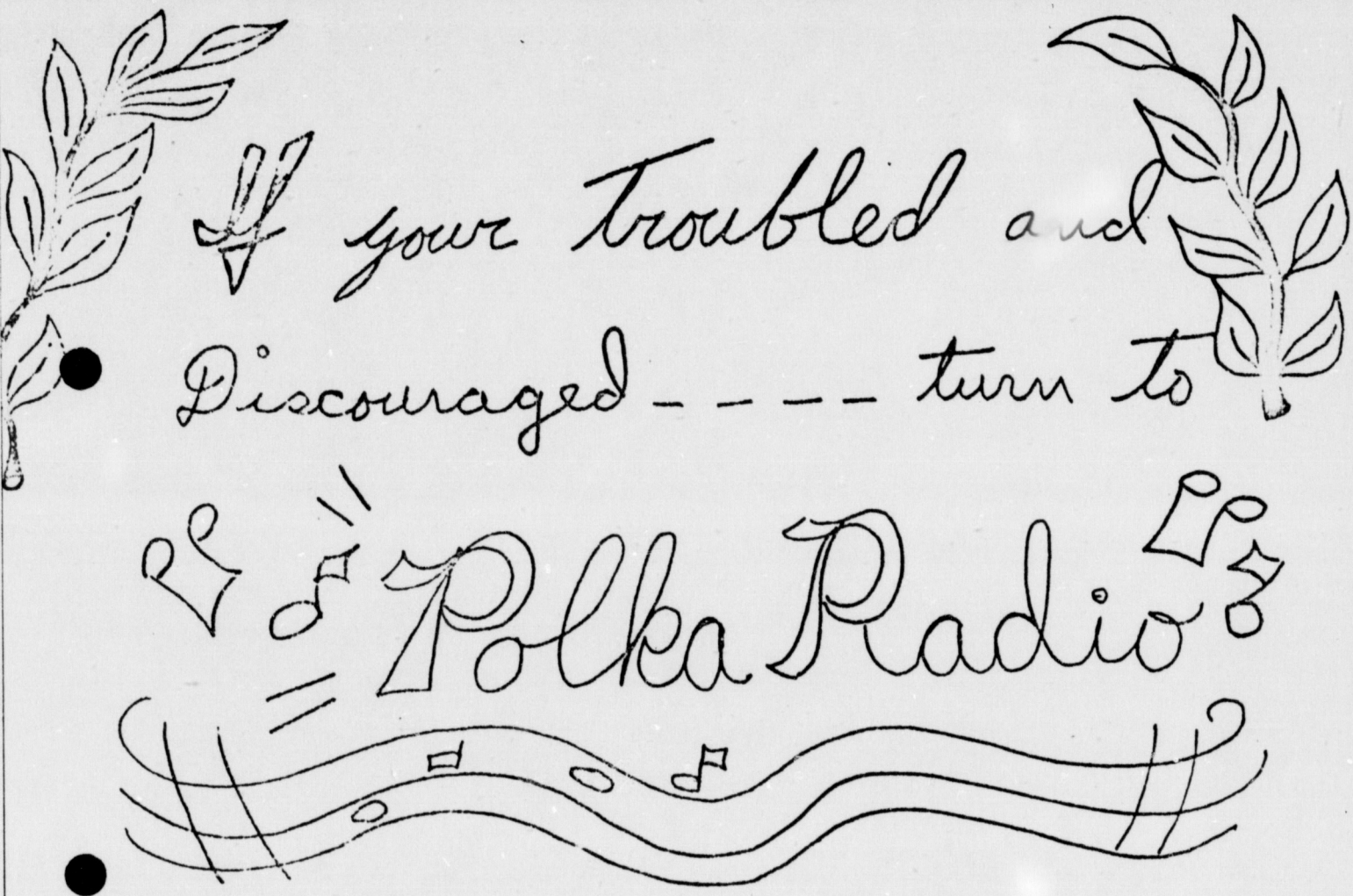
Again, I must stress that this is, at best, an interim direction which does not address itself to the longer term. However, I would hope that with your cooperation and investment in the program that the Vermont Institutional Industries program could once again become dynamic and be useful to the inmates employed as well as the state.

Sincerely,

Kent Stoneman

Kent Stoneman
Commissioner of Corrections

KS/t
cc to Mr. John Shuttle
Editor, The Luparar
Mr. J. V. Moeykens
Mr. Allen Miller



With Bob Opal. New Englands
NO. I. D.J.

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THE LUPARAR

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VOLUME IV NOVEMBER No. 10



EXTRA MAXIMUM SECURITY? AVAILABLE

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HOPE

By: Jerry Chamberlain;

There are hopes in every dream
Even though it may seem
That we are all forgotten

They lock us behind Prison Walls
But our hopes should never fall
Even distant as it may seem
We shall over come this regime

Sisters & brothers, Stop! And question Why
Even though they shall try, to take our hopes
They will never succeed
Because one day we shall all be freed

Then we shall watch the Prison Walls
As they begin to tremble and fall
God's messenger, he will send
And this regime shall come to an end

BEAT'E.. OR TREAT'E

by John Shuttle

...o h.v.. another problem. Visitors .re beino turned .way by the ..rison authorities. Thos. ar.. peo.le who want to know what their tax money is b.ino used for .nd who h.ve a humane interest in th. w.y the inm.es .. being tre.ted. The only obvious reason that visitors are restricted to blood relatives is th.t the authorities h.ve some-thino to h.de. A torneys are refused .ermission to enter less they see and report on conditions within. It must be that they .re .shamed to h.ve .nyone see just wh.t kind of a hell-hole they work in .nd the conditions under which the inmates must live. Here I one of the peo.le in authority, I for one would certainly not want anyone to see wh.t I subject people to. I would not even admit that I worked here. I can just see it. "Mr Commissioner, wh.t is your job?"Oh I'm the Commissioner of the Vermont State Prison. I cage people up. I order more cages, more walls, more hole time, no y.rd time and no visitors. I really straightened that pl.ce out. Ypu should se. some of the inmates in there. I've h.d them in the hole so long that their minds are a complete blank. Some still try to holler but we've got a cure for that. We just give them a shot of dope and that does the trick. It takes three or four guards to hold them, but who cares".


CORRECTIONS
PRISONER
RIGHT

Legal Editor

Vermont Combinations

Our Vermont combinations are unique in comparison with the sister states of the nation that operate the judiciary branch of goverment as a separate and distinct department of goverment.

The most infamous Combination bulging in Vermont at this time is the public merging of the prosecutor and the judge in Chittenden County.

The " Bobsy Twins" as they are referred to by the unfortunate that have been forced to be aparty to the sham proceedings in Vermont District Court of Star Chamber at Burlington, publicly announce that they (the twins) are a team dedicated to the stamping out of crime in the Burlington area.

But, forsooth; The crime rate is decreasing in every county in Vermontexcept Chittenden County. One can check the statistics for this past year. Perhaps the Intrac proceedings going on in the Burlington sub-station are not the answer to the problem of crime control. Perhaps the Combination should be abolished, and a new Court set up that would at least resemble the tribunal intended by the Constitution.

God apparently is not dead because it must have been he or some great power, that interceded and caused Frank Mahady to resign in Windsor County, thereby nipping in bud a modern day disaster known as the combination of Ellison and Mahady.

I feal that George Mc Govern is right in his view on granting amnesty to boys who would not fight to uphold the Constitution of Vermont State. The instrument was written in vain. Judge Costello and Patrick Leahy ridicule it daily and even announce often in Leahy's newspaper, the Burlington Free Press, that they run the People's Court.

Bernard Woodmansee

CONGRADULATIONS:

Congradulations to Louis Bowers, on his VICTORY. A great win for all of the inmates, possibly though a longer stay here at V.S.P., for Louie. I feal certain the Department of Corrections, will do all in thier power to make sure he is not granted parole. My personal thank you Louie, for guarding my rights and others at such cost to you.

Bernard Woodmansee

Ever heard- "My lawyer was so dumb, he thought Moby Dick was a social disease".

YOU ARE NOT ALONE

Following is a list of organizations and individuals who have indicated their interest and willingness to help in the nation wide crusade for penal reform. They are interested in you as an individual and in what you have to say about life behind these walls. In making this list available The Lumpen ask only that you refrain from falsehood and exaggeration when corresponding with those listed therein. The facts of every life as lived by the men incarcerated here are more telling an indictment of "the system" than any fabrication, so "tell it like it is" Brother, and "the truth shall make you free". This list will be addended and updated as new correspondents become available. the editors.

1st Issue
42 Clark st.
Brattleboro, Vt.

The Pioneer
Community College
Glens Falls, N.Y.

Daily Eagle Forum
Claremont, N.H.

Forum For Contemporary
History. P.O. box 127
Stearns Wharf, Santa
Barbara, Ca. 93101

Ms. Fay Stender
Prison Law Project
5406 Claremont Ave.
Oakland, Ca. 94618

Dennis Shattuck
Vermont News Service
4 Pitt Place
Montpelier, Vt.

American Service Committee
42 Inman St., Cambridge, Mass.

John Schuchardt
Public Defender
Windham County, VT.

Professor Livingston
Hall, Harvard Law School
Harvard University
Cambridge Mass.

Professor Herman Schwartz
Prisoners' rights Comm.
ACLU, 77 East Eagle st.
Buffalo, N.Y.

Bruce Jackson, New York
State University.
Buffalo, N.Y.

Attorney Richard Kohn
Vermont Legal Aid.
Railroad st., St. Johnsbury
Vermont

Attorney Paul Gerch
Box 9, South Pomfret, Vt.

Ryan Latsbo, Citizens Group
for Correctional Reform
Saxtons River, Vt.

THE GATHERING STORM

The prosecutors, the states' executioner, and the other high ranking political numismatists, are loudly preaching their fascist gospel that "something must be done to curtail the rights of prisoners to petition courts."

Let me say this about that.

This government or any government for that matter, that attempts to suppress the rights of the people to petition the courts of law to redress grievances, is a government headed for certain downfall. History supports the proposition that people will redress wrongs by another means if they are denied the right of access to the courts.

I wish to make it perfectly clear that I use the title "courts of law", because I for one, cannot in all conscience refer to the Vermont Star Chamber Courts as"courts of justice". Be that as it may, we have oft times forced the Star Chamber Courts to rule favorably on behalf of a prisoner when the violation of the mans' rights was too gross to be camouflaged.

Let me remind the previously mentioned political numismatists of what happened in this country two hundred years ago, when the citizenry was denied access to the courts by the power of government. The citizenry decided that the power denying them their basic rights would no longer govern them. The people determined in their declaration that: "whenever any form of government becomes destructive of these ends, it is the right of the people to alter or to abolish it."

The present governing authority of this state and nation are leaning towards the establishment of legislative tyranny. If this authority does not shift its' weight to a balance of justice in government, we are going to find ourselves in the position of Ireland. Anarchists will certainly attempt to overthrow the present system and they will look to the prisons

over

for their armies. I wonde how many recruits the Anarchists would get from our little "country club"? I ask all reasonable thinke s to encourage any person in this state to petition the c urts for r dress of th ir grievances, and I ask the courts to see that redress is granted, regardless of the financial status of the petitioner.

If the aforementioned political numismatists are so afraid of the la , let them get out of the legal business and collect their coins in some other devious fashion instead of destroying the Constitution in order to keep their plush positions.

Billy Fox.

NOTICE- Lunarar needs money. We do accept payola, bribes, Etc,Etc. Send money to Editor John Shuttle as I don't trust my staff.

Warning- There is a good chance you may be molested. Gay Lib. has moved in. Ask Raby for det ils.

Have you noticed? The Commissioner hires and fir s the Warden. The Warden takes his orders from the Commissioner. The Warden loses his job for taking orders f om him. The Warden don't dare say a word. The Commissioner will fire him and he will lose his retirement.

We really should vote for the Republican party. Look how crooked they are, and they get away with it. Apparently a crime is not a crime if committed by a Republican.

HONOR BLOCK

Mr. Moeykens, our newly appointed Warden, has started in his new set of rules that the honor block is started again. We now have three (3) sections in Vermont State Prison: honor block, C block, and the street side of C block known as the "Concentration Camp" part of the prison. To the staff, the men in the B block section of dungeons are known as inmates. In the other sections of this prison, the men are known as convicts.

I suppose this comes under the new classification rules.

The inmates in the honor block are allowed to be out of their cells until 9.30 at night and may shower anytime at their leisure. You who so desire, may call it honor. I call it bull-shit. Us convicts in the rest of the prison are allowed two (2) a week. We can have a shower every day if we agree to give up our yard privileges.

How are convicts turned into inmates? Ah Ha! That is Mr. Moeykens secret screening process which he dare not divulge lest it be instituted at other correction centers and he lose the glory for this new creation. Or maybe this is just the same old routine handed down by that greatest penologist of all times, Mr. Robert G. Smith. It has the same odor as some of the other "secrets" he surprises the convicts with from time to time. A wise man profits by past mistakes but a fool never learns.

Discrimination stands out so vividly that I would not be in the least surprised to hear again the cry of the condemned: "down with Moeykens".

That was one of the first demands made during the disturbances of the past, and still we are stuck with him. Well- the oppressed have always risen from the very beginning of time.

S. Williams

Notice-If someone comes around with a big box for cigarettes, candy and goodies, feel free to donate. The editor can be bought. Have you noticed the inmates of ill repute in with him?

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A THANK YOU
TO THE PRAYER VIGIL GROUP

When this group first came to the prison under the leadership of John Schuchart, very few people were aware of its' purpose and intent. I believe the paragraph below best expresses' why the group maintained the vigil.

"Because in sympathy with the prisoners the feel the need is for an immediate humanizing of conditions at the jail, a number of concerned people have undertaken a weekly vigil outside the walls of Windsor".(quoted from The First Issue, a Brattleboro newspaper).

I believe the groups' original intention was to prevent through prayer, a bad situation from getting worse, that their prayers would help officers and inmates alike to realize the need for control in a potentially explosive situation. I might add that not one act of violence took place in either the segregation area,A blk, or the cage area, C blk. since this group of sincere people became a part of our struggle through their prayers.

I would like to thank each and every member of the group for the support given to us through their prayers, In doing this, I believe I express the thanks of all here at Windsor, who truly recognize the sincerity of the Prayer Vigil Group.

Sincerely
Louis Powers

Quote- "I was never a crook till
I got caught and then I had to take
someone elses' word for it."

THE HAPPY BUSINESSMEN

BY : JOHN SHUTTLE;

People like to see other people put in Jail. In my case there was a dozen people who gained by it. A new truck that I had about paid for was taken back by the dealer who resold it at the same price I bought it for in the first place. (P. Kennedy). The Colored T.V. was taken back at once. The sitting room set and the Hi Fi were taken also. The camper was also taken. All the people who took those things made a profit on top of the profit that they had already made on me. I owed $500.00 on the Truck. I payed in payments of $1500.00, the company took it back and resold it to someone I know who paid $2000.00 for it. It only cost two-thousand when I bought it. The company so far has sold that truck for $3500.00 and may resell it again. He for that kind of money must pray each night for reposession. It got him in the Legislature didn't it? All of the businesses must do the same thing. I for one know they pray for a Divorce, They get everything back and resell it. Like above I have been on reposess jobs. I know.

Got a nice letter and a generous donation from Ms Margaret Jane Federico of Bennington, Vt. Many thanks M. J., and let us continue to hear from you.

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STONEMANS' PROMISE

As one of the first Lupariar staff members I attended a meeting with Mr. Stoneman, as requested by the Lupariar.

Mr. Stoneman stated that he would definitely try to get the Vt. legislature to pass a bill providing for no minimum sentences. At second meeting he stated that he did not think the bill got no this such. As we all know, it never even got started. It was a great idea that got lost the way of all others that might benefit the inmates.

However if this bill had been realized, it would have at least provided some incentive in the form of something to look forward to.

As things now stand, we have no programs to speak of, nothing close to vocational training of any type unless you want to learn how to carve an elephant; and what the hell do you do with it once you get it carved.

No dog ever had conditions as bad to exist under. The world is aware that this is the oldest prison in the nation. A new prison is not the answer and its' time some of the old fashioned Vermonters learned this. Locking young men away for the better part of their lives only makes the hardcore criminal, the con killer and the repeater.

Most of the newspapers state that very few first offenders are sent here but it is a fact that 50% of the inmates are first offenders sent here to vegetate for whatever length of time any Judge may deem necessary.

Not only the young but everyone here is affected by these dismal conditions. How in the hell can anyone set here in a cell for three or four years and better himself. Give me the answer and I'll try it.

Mr. Stoneman has the right idea if only someone in the legislature would pick it up and do something about it. The answer is not a new prison or longer sentences. Sentences without a minimum would give everyone concerned a goal and an incentive to win an early release. The way things stand now, you have so much time to do and it doesn't matter in the least how you conduct yourself. You are leaving when your time is up! A little colder, a little more bitter, and with a stronger resolve not to get caught.

So you learn how to carve out a lion or an eagle or an elephant. Three or four kids can get pretty hungry waiting for daddy to finish carving an elephant to trade for some groceries.

If the powers that be really think a new prison is the answer, why are they sinking half a million dollars in this dump? And what of the thousands already spent remodeling? Come down and take a look around and you will notice the improvements. Thousands of dollars worth of cement blocks and not even a can of paint to cover them up with.

Marion Illinois has one of the newest, most modern prisons in the world, and it turns out more killers than any other in the nation. So build your walls high. I imagine that eventually you will need them

G. Williams

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EXTRA MAXIMUM SECURITY?
CLOSE SECURITY?
SEGREGATION?

by louis bowers

In the last part of August, 1972, there occured at the Vermont State Prison, an event which brought down the public wrath of area residents, and the wrath of the official hierarchy of the State of Vermont. The so-called "mass escape".

As a result of this escape, the Governor of the State of Vermont decided that drastic steps had to be taken at the old "Bastille".

These drastic measures took the form of a record check of the remaining prisoners, and the decision by the Governor(and I assume the Commissioner) that twenty six of these men,who, because of their legal astuteness or their past behavior patterns, were to be isolated in the A block section of the prison, a section that is more than 163 years old.

On or about the 20th of August, the "Goon Squad" seized and removed from their cells 18 of the selected 26 men. These men were placed in the extra maximum security segregation section,old A block, without knowing what charges had been brought against them and without a hearing. Of the men placed in this special unit, one went berserk the first week and was removed to the State Hospital, and another attempted suicide. These 18 men were denied every right and privelege consistant with law.

On September 2nd, 1972, The Honourable Sterry Waterman, Senior Judge of The 2nd Circuit Court, issued an "injunction and restraining order", which prevented placing any other inmates into A block segregation unless full legal hearings were held. He also ordered ad hoc hearings for those already held there. Sham hearings were held and when no remedy was forthcoming, Louis Bowers, one of the segregated men, with the aid of Atty. Paul Perch and Legal Aid Atty. Richard Kohn, filed a class action suit and Bowers, Et Al vs. Smith and Stoneman eventually reached the court of The Honourable Chief Judge James Holden.

On October 12th,1972, Judge Holden in his findings of fact found that Bowers had in fact been placed in segregation unjustly and in violation of his constitutional rights to due process. A order eventually issued to the effect that no later than Oct. 28th, Bowers was to have a full

cont. next page

hearing in compliance with due process or failing that, to be released from segregation.

On Oct. 27th, Bowers was brought before a hearing board, where he again asked that he be granted legal counsel and other aspects of due process that had been denied him at the "sham" hearing. He was then told, "this is an administrative hearing only, and if you are returned to the general population, it will be only because you have earned that right based on our "point system". Bowers then proceeded to enter into record exactly what he thought, and standing upon the principle of the whole deceit of the affair, he told the administrative hearing board members that since he should not have been placed in segregation in the first place, and for the finding of Judge Holden, he should be returned to the general population in the same status and on the same job he held when he left. He was told that all privelages would be restored but no job was available to him at the time.

So after the deprivation, loss of visits, loss of job, sub-human living conditions and near total lock-up, Bowers was moved to 4th tier C block general population, cell C324. To this tier and cell specificly, he was told by one of the staff, because he is a "quiet" inmate. At the same time, two other inmates, Robert Dragon and Raymond Rushford were moved from the segregation unit to the same tier. 14 other inmates remain in the A block segregation unit. All but two or three of them are in there just as illegally, and just as much in violation of their constitutional rights as the three men who were removed. It is claimed that they lost points. But how can one lose anything when he is being held illegally?

I have asked the Vermont Legal Aid to assign individual counsel to every man in segregation who is there only because he lacks the knowledge of law to obtain his constitutional rights of due process.

In closing let me express my thanks and appreciation to Atty. Werch, Indiana Aid Atty. Mohn who, in spite of bad publicity, public anger and political implications, did not sway from their ethical principles, but conducted the case in a manner that can only reflect credit on their profession.

The Bible says that the only thing lower than a convict is his keeper. Boy, do we have a lot of keepers!

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YOU'VE GOT RIGHTS, USE THEM!

FOR THOSE WHO ARE UNINFORMED ON WHAT RIGHTS YOU HAVE CONCERNING ANY DISIPLINARY ACTION TAKEN AGAINST YOU, THE FOLLOWING IS A LIST OF YOUR RIGHTS AS OF JULY 1972. USE THEM! MEN HERE FOUGHT FOR THEM SO DON'T MAKE IT EASY FOR THE ADMINISTRATION TO BUST YOU.

1. THE GUARD MAKING THE CHARGE SHALL COMPLETE A DISCIPLINARY REPORT FORM WHICH SHALL INCLUDE:
   A. NAME OF REPORTING GUARD
   B. TIME, DATE AND PLACE OF VIOLATION
   C. DETAILED ACCOUNT OF THE ALLEGED INCIDENT INCLUDING NAMES OF WITNESSES, ECT.
2. A COPY OF THE REPORT WILL BE IMMEDIATELY SUBMITTED TO THE CAPTAIN'S OFFICE AND THE MATTER REVIEWED AS TO COMPLETENESS, ACCURACY AND POSSIBLE MITIGATING CIRCUMSTANCES.

3. YOU MUST BE GIVEN A COPY OF THE DISIPLINARY REPORT SUFFICIENTLY PRIOR TO THE HEARING TO ENABLE YOU TO PREPARE FOR THE HEARING.

4. YOU MAY REQUEST TO BE REPRESENTED BY YOUR COUNSELER OR SOME OTHER FACILITY PERSONNEL.

5. NO PERSON WHO WAS DIRECTLY INVOLVED IN THE INCIDENT OR WHO PREPARED THE FORMAL CHARGE IS ALLOWED TO SIT ON THE DISIPLINARY COMMITTEE.

6. THE HEARING MUST BE DONE WITHIN 7 DAYS.

7. YOU HAVE THE RIGHT.
   1. BE PRESENT AT HEARING
   2. CONFRONT AND QUESTION ALL WITNESSES
   3. PRESENT YOUR CASE AND DISCUSS THE INCIDENT
   4. CALL WITNESSES OF YOUR OWN
      A. YOU MUST INDICATE THAT THE WITNESS IS RELIABLE AND THAT HIS TESTIMONY WILL BE RELEVENT TO YOUR CHARGE.

THE MOST IMPORTANT THING YOU HAVE THE RIGHT TO APPEAL YOUR CASE. MANY PEOPLE WANT TO APPEAL BUT DO NOT KNOW HOW TO GO ABOUT IT. IF YOU WANT TO APPEAL CONTACT A MEMBER OF THE LUFARAR AND THE NECESSARY STEPS WILL BE TAKEN TO HELP YOU XXX ON YOUR APPEAL.

YOU HAVE THESE RIGHTS DON'T BE AFFRAID TO USE THEM.

RICHARD J. CRONIN

PUNCH LINE

You know the other day I felt really blue and down in the dumps and life wasn't worth living.
So I invested some money in a bus ticket and went to New York City. There I found a very high building and climbed to the top and let myself off a there. Then I got about halfway down and just beginning to lose my fear and enjoy the ride, some guy standing down below shouts up and says "Hey you fool, don't land down here-theres' a broken bottle down here". And people, let me tell you I had one hell of time getting back to the top.

I would like to know how many people believed this little story right up to the punch line? I know that some of you had some of these reactions: man, what a fool, or hes' crazy, or last but not least- that mans' sick. But read on Dear Reader, and you may just change your hasty judgement.

I beleive that the people outside are the most gullible and immature people I've ever met. I don't mean that they are stupid, not by any means, but maybe I should say insecure. By this I mean they are looking for something they will never find and thats' an honest official.

There is always one smart cookie with the gift of gab and he goes around making statements and promising things that he can't possibly do or could ever happen, and they all sit there and will beleive everything he says. But they'll never sit down and look for his punch line.

Just because a person sits in the Governors' office, Judges, prosecutors , Warden of prison or just plain cops does not mean that they are infallable, but the people beleive at first that they are, Then after a little while the guy who made so many promises that he would fulfill their dreams and don't; then when they have a reason to have a run-in with their elected monarchs, then and only then do they see the punch line of their Vermont Officials,(which in this writers mind is "once I'm elected and sure of my term in office, to hell with you").

Once the people of this state have had this little run-in with their officials and the promises haven't been fulfilled, then they lose what sense of security they had in the people of their choice, then the guy is no damned good.

Well, Dear People,you and not him elected the fool into office so let's this time listen for a punch line.

cont. next page

When people like us in Vermont Correctional Facility write articles on the grave and serious predicament here at this place, the people call us radicals or militants, looking for sympathy or comforts of home. Well people, bear in mind that the inmates here have no punch line, but only attempt to bring this to the attention of the people, so that they may see what is happening to their tax dollors and that someday it may happen that one of their children or husband may wind up here, and live like a pre-historic animal.

The monarchs of Windsor are hollering because the state has finally come up with a sensible idea to help future drug and alcohol offenders.

Well, in closing I would like as a person who(when I am out) makes his home in Windsor, to go down to the town dump (which is Jarvis street) and put their big noses around there. If they try to help those people, maybe the state will have enough time to help us who are here, instead of feeling required to run downtown and report every time they blow their noses to the town fathers.

Adios till next time you-all

Lawrence W. Hakey
(Yake)

Suggestion- Instead of messin around and running hot water lines to the cell blocks, why not issue canned heat or Sterno to all inmates. Regardless of how it is used, one thing is certain: somethings gonna get "boiled".

Notice- The T.V. cable company is crying. It seems that some inmates are not paying their monthly fee. Rent for cable service is $1.00 a month. Some inmates cannot pay, so will be removed from cable. The Luparar will accept donations to help those who cannot afford the monthly fee.

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THE PRISONER

No prisoner can tell his honest thought
unless he speaks as one who suffers wrong,
but for his comfort he may make a song.
My friends are many, but their gifts are naught.
Shame will be theirs, if, for my prison, here
    I lie another year.

They know this well, my barons and my men,
ARTHUR, SALISBURY, WINDSOR, WARENNE,
that I had never follower so low
whom I would leave in prison to my gain.
I say it not for a reproach to them,
    But prisoner I am.

The ancient proverb now I know for sure:
Death and a Prison know nor kin nor tie,
since for mere lack of Money they let me lie.
much for myself I grieve, for them still more.
after my death they will have grievous wrong
    if I am prisoner long.

What marvel that my heart is sad and sore
when my keeper torments my helpless lands.
well do I know that, if he held his hands
remembering the common oath we swore,
I should not here imprisoned with my song
    remain a prisoner long,

They know this well who now are rich and strong
great men of this day and age
that far from them, on hostile bonds I strain.
They loved me much, but have not loved me long.
Their plains will see no more fair lists arrayed,
    while I lie here betrayed.

Companions whom I loved, and still do love,
tell them my song, that they are friends untrue.
never to them did I false-hearted prove,
but they do villainy if they war on me,
    while I lie here unfree.

May he preserve whose help I claim,
victim for whom am I.
I say not this of one, but of all
    Restrained of their freedom.

Submitted by

James P Senna
Vermont State Prison
Windsor, Vermont

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" NOW MY KIDS REALIZE THEY HAVE A FATHER "

" FOR THREE TOTALLY UNSUPERVISED DAYS SAMSON DIXION LIVED WITH HIS FAMILY IN A NEATLY FURNISHED BUNGALOW JUST OUTSIDE THE GUARD-PATROLLED PRISON FENCE, COOKING BARBECUES, PLAYING WITH HIS CHILDREN, AND SHAKING OFF SOME OF THE HOPELESSNESS AND BITTERNESS OF PRISON LIFE. THE ONLY RESTRICTIONS WERE A BAN ON LIQUOR AND A REQUIREMENT THAT HE PHYSICALLY PRESENT HIMSELF TO A PRISON TOWER GUARD THREE TIMES DAILY."

THE ABOVE AND FORGOING ARTICLE APPEARED IN THE LIFE MAGAZINE AUGUST 13,1971.

WHY? MIGHT WE ASK, HAS THE STATE OF VERMONT NOT TAKEN STEPS IN THIS DIRECTION TO ENSURE FAMILY UNITY IN CONFORMANCE WITH REHABILITATION?

I'M SURE IF YOU ASK, THE REPLY WILL BE, " WE DON'T HAVE ANY FACILITIES."

YET I CAN EASILY THINK OF ONE BUILDING DIRECTLY IN VIEW OF THE TWO GUARD TOWERS HERE AT V.S.P. THAT COULD BE RENOVATED VERY EASILY TO ACCOMODATE AT LEAST TWO CONJUGAL VISITS PER WEEK, FOR A TOTAL OF EIGHT VISITORS PER MONTH.

THE GREENHOUSE BUILDING WHICH IS IN VERY GOOD CONDITION, NEEDING ONLY VERY FEW RENOVATIONS COULD BE USED FOR SUCH A PURPOSE. IT IS DIRECTLY IN VIEW OF THE TWO REAR WALL GUN TOWERS, WHEREBY ANY MAXIMUM SECURITY MARRIED INMATE WOULD BE VISIBLE TO THE GUARD TOWERS. IT HAS A SPACIOUS AREA FOR SWINGS, PLAYPENS AND AN AREA FOR A BARBECUE PIT. WHAT BETTER USE COULD IT BE PUT TO? IT ONLY SETS OUT THERE FALLING TO THE GROUND FOR LACK OF CARE AT PRESENT.

I AM QUITE SURE THAT EVEN IF THE STATE OF VERMONT DID NOT WANT TO FOREGO THE EXPENSE OF THE RENOVATION JOB THAT THE INMATE POPULATION WOULD DONATE TO THE PURCHASE OF THE NECESSARY MATERIALS NEEDED AND EVEN SEE THAT NECESSARY FURNITURE WAS AVAILABLE.

THE FURLOUGH PROGRAM WOULD COVER THE REST AND WHAT BETTER USE COULD IT BE PUT TO?

IT WOULD BE NICE TO SEE THIS IDEA BECOME REALITY AND TO SEE IT USED FOR ALL MARIED INMATES HERE. MY APPREHENSIONS WOULD NOT BE THE ESCAPE FACTOR BUT THAT THIS INSTITUTION WOULD SURELY FIND A WAY TO DEPRIVE ALL MARRIED COUPLES OF IT'S BENEFIT. IT WOULD EVENTUALLY BE TURNED INTO," A BIG RED APPLE FOR THOSE IN POSITION TO BE THE TEACHERS PET." IT WOULD BE NICE TO SEE ONE BENEFICIAL PROGRAM INSTILATED HERE THAT WOULD BE BASED UPON " PURPOSE OF BENEFICIAL INTENT," RATHER THAN A," PERSONALITY CONTEST BETWEEN INMATES AND STAFF."

I AM NOT MARRIED AND HAVE NOTHING TO GAIN BY THE INSTILATION OF CONJUGAL VISITS BUT I TRULY WOULD LIKE TO SEE THEM IN V.S.P. FOR THE BENEFIT OF ALL THOSE WHOSE MARRIAGE MUST SUFFER THE TORTURES AND HARDSHIPS OF YEARS TORN FROM THEIR LIVES, OF SEEING THEIR CHILDREN GROW UP NOT REALLY KNOWING

over

THE CLOSE RELATIONSHIPS OF THEIR FATHER OR THE JOY OF SHARING THE LOVE THAT ONLY COMES FROM BEEING TOGETHER, UNDER NORMAL CONDITIONS.

LOUIS F. BOWERS

NOTE:

USING AS REFERENCE THE ARTICLE ON " PRISON REFORM" " LIFE MAGAZINE" AUGUST 13, 1971

"RESTRICTED POWER"

NO RESPECT FOR A MAN AND HIS NAME,
CAUSE HE'S BEEN CONVICTED;
WE CAN'T MAKE A MOVE AGAINST THIS GAME'
CAUSE OUR MOVEMENTS ARE RESTRICTED;
BUT WE GET HIGH FROM THE PRIDE,
THAT FLOWS THROUGH ONES VEINS;
YOU MERELY HOLD POWER ON YOUR SIDE,
BECAUSE YOU HOLD THE REIGNS;
YOU HOLD THE KEY TO FREEDOM,
AND YOU WALLOW IN YOUR MIND;
BUT YOU'LL NEVER MAKE ME ANY SORT OF TOM,
CAUSE MY PRIDE WILL NEVER EXPIRE;
TAKE MY FREEDOM OF MOVEMENT,
SILENT MY FREEDOM OF SPEACH;
BEAT MY BODY WITHOUT RELENT,
BUT MY PRIDE YOU'LL NEVER REACH:

MICKEY FRAZIER

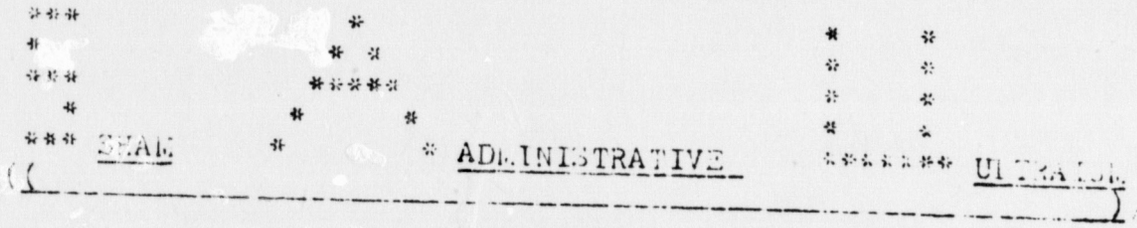
ARE YOU HAPPY WITH YOUR PRESENT CLASSIFICATION? IF NOT YOU HAVE THE RIGHT TO REQUEST A HEARING AND THE ADMINISTRATION MUST TELL YOU WHY YOU ARE CLASSIFIED WHAT YOU ARE.

IF YOU WISH TO CHALLENGE YOUR CLASSIFICATION PLEASE CONTACT A MEMBER OF THE LUPARAR AND THEY WILL CONTACT AN ATTORNEY FROM THE VERMONT LEGAL AID WHOM WILL REPRESENT YOU.

ANY TIME YOU SERVE WAITING FOR DISCIPLINARY ACTION MUST BE COUNTED.

LT. SILVA HAS QUITE HIS POSITION AS PROOF READING THE LUPARAR BEFORE IT GOES TO PRESS. HE DOES NOT LIKE WHAT HE READS. IF YOU DO NOT LIKE WHAT YOU READ SE[illegible] A LETTER. WE WILL PRINT IT.

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On the special adjustment unit now used at V.S.P. (the case) this is where the Prison Authorities can retain Inmates beyond the legal time limit of 15 days for one offense.

The case of J_ _ _ _ f_ _ _ _ _ for example. He on a charge of escape, was put in the Hole for 15 days, while he was in the hole he called a Guard a " dirty name ", He did another 15 days in the hole. He was then taken to the SPECIAL ADJUSTMENT UNIT for the escape and name calling and will most likely be there for months to come. Of course he still must go to Court for the escape charge also. The SPECIAL ADJUSTMENT UNIT and the HOLE are one and the same. It has been given a big fancy name (SAU) to justify it, and to get around the Legal Rights of the Inmate's that the last General Assembly of Vermont enacted.

The conditions were better before the General Assembly granted us some Rights. However some one has to be blamed for all the Escapes, and you can't expect the Prison Authorities to take the blame. It is only their job, and they have not done that right since the " Out of Stater " has come here and taken over the Department of Corrections.

JOHN SHUTTLE

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CAPTIVES OF THE THIRD REICH

by John Shuttle

Look what the <u>out of Staters</u> have done for Vermonts' correction system.

They have spent hundreds of thousands of dollars buildin the prison, only to turn around and take down the buildings they have just put up. They have spent thousands of dollars putting up cages and walls then changed their minds and built something else. They have money for as many guards as there are inmates. Years ago there was 350 prisoners and 75 guards. Now there are about 85 guards for 100 inmates and things are not running as well as they were before the dept. of Corrections captured this institution.

All the fuss of late has been blown up by the correction officials to place themselves in the limelight and to justify holding their jobs.

The taxpayers had better dig down in their pockets for more money. The Corrections Dept. will need it. They are still running the prison with the same old incompetent officials that caused all the fuss to begin with.

On weekends one guard runs C block without any trouble. Weekdays there are 12 to 15 guards on the same block and they have more trouble than on weekends. There are plenty of guards but they won't work weekends or nights. If assigned, they just don't show up for work. Certain guards won't work with certain others. They have their own cliques and groups.

On paydays, the prison is run with only 6 or 7 guards. If the payday falls on a weekend, some of the guard have to work more than 24 hours at one stretch. Most of those who show up don't know what to do. They try to keep out of sight. They can be seen all over the place. In cells, reading dirty books, watching T.V., Etc, Etc.

We the inmates don't care what the guards do. What we do care about is the way the commissioner and his staff blame us for their "diabolical machiavellianism" in order to make themselves look good to the public. The public will beleive anything-moreso when spoken by state officials.

Now that it is election time, another farce prison investigation ought to be in order. That is like having the States Attorney investigate himself for corruption.

A good example of the way things go here occured the other day. We had hamburger meat for dinner. It was spoiled. Members of the staff were told that the meat was not good. They would not eat it themselves but not one of them would say a word or do anyt ing. This is the kind of situation we are expected to tolerate. If the situation were reversed, I wonder how many of them would show as much tolerance as the inmates presently do.

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EDUCATIONAL DEPARTMENT

MANY OF THE INMATES HERE AT THE WINDSOR STATE CORRECTIONAL INSTITUTION WISH TO BESTOW THEIR MANY THANKS ON MR. ORLANDO C. TUSLER, DIRECTOR OF EDUCATION, FOR THE MANY NEW PROGRAMS HE HAS BEEN ABLE TO INSTALL IN THE PAST TWO YEARS.

MR. TUSLER IS STILL DOING AND GOING STRONG WITH MORE NEW PROGRAMS IN THE IMMEDIATE FUTURE. A NEW SPEED READING COURSE AND TYPING COURSE WILL BE OFFERED SOON.

MANY INMATES HAVE ALL READY RECIEVED THEIR " HIGH SCHOOL DIPLOMAS ". TWO NEW CLASSES ARE STARTING NOW " ADULT BASIC EDUCATION ", AND " HIGH SCHOOL EQUIVALENCY ".

SEVERAL ACTION PACKED CLASSES ARE ALL READY RUNNING FULL BLAST " BASIC PSYCHOLOGY ", TAUGHT EVERY MONDAY BY MR. XXXXXX SARGENT, SMALL BUSINESS ADMINISTRATION ", BY MR. WALKER, EVERY TUESDAY, " CIVIL LAW ", BY MR. DORSCH, ON WEDNESDAYS, " IMPROVED WRITING ABILITIES " BY MR. KNAPP ON THURSDAYS.

MAYBE SOME OF THE INMATES WOULD BE INTERESTED TO KNOW THAT MR. WALKER, MR. DORSCH, MR. SARGENT AND MR. KNAPP DEVOTED THEIR TEACHING TIME FREE, FROM THE KINDNESS OF THEIR HEART. AND OUR MANY THANKS ARE IN ORDER FOR THEIR INTEREST AND DEVOTION.

MR. TUSLER IS VERY PLEASED WITH THE RESPONSE HE IS GETTING FROM THE ENROLLMENTS AND INTEREST HE IS GETTING FROM THE INMATES AND STAFF AS WELL IN THESE VARIOUS PROGRAMS.

HE IS MORE THAN DELIGHTED WITH THE NEW TUTORS HE IS AQQIRING ON HIS STAFF. MANY OF THE OLD TIMERS ARE AQUAINTED WITH INMATE ROBERT NESTO. BOB HAS A PRETTY WELL PACKED CLASS ROOM FROM 8:00 TILL 4:00 EVERY DAY, IT IS WELL KNOWN BOB KNOWS EXACTLY WHAT HE IS TALKING ABOUT.

THE TWO NEW CIVILIANS ON THE STAFF ARE NO SHORTSTOPS WHEN IT COMES TO THE EDUCATIONAL DEPARTMENT, MR. RHYNE, IS AN OLD HAND AT THIS GAME, HE HAS COME OUT OF SEMI-RETIREMENT TO HELP THE INMATES. ALSO MR. USHER, WHO TEACHES READING & SOCIAL STUDIES AT WINDSOR HIGH SCHOOL, THEN RUSHES OVER TO HELP.

MR. MIKE COXIN, HEAD OF TREATMENT HAS BEEN MOST HELPFUL IN MAKING OUR EDUCATIONAL PROGRAM HELPFUL AND PURPOSEFUL.

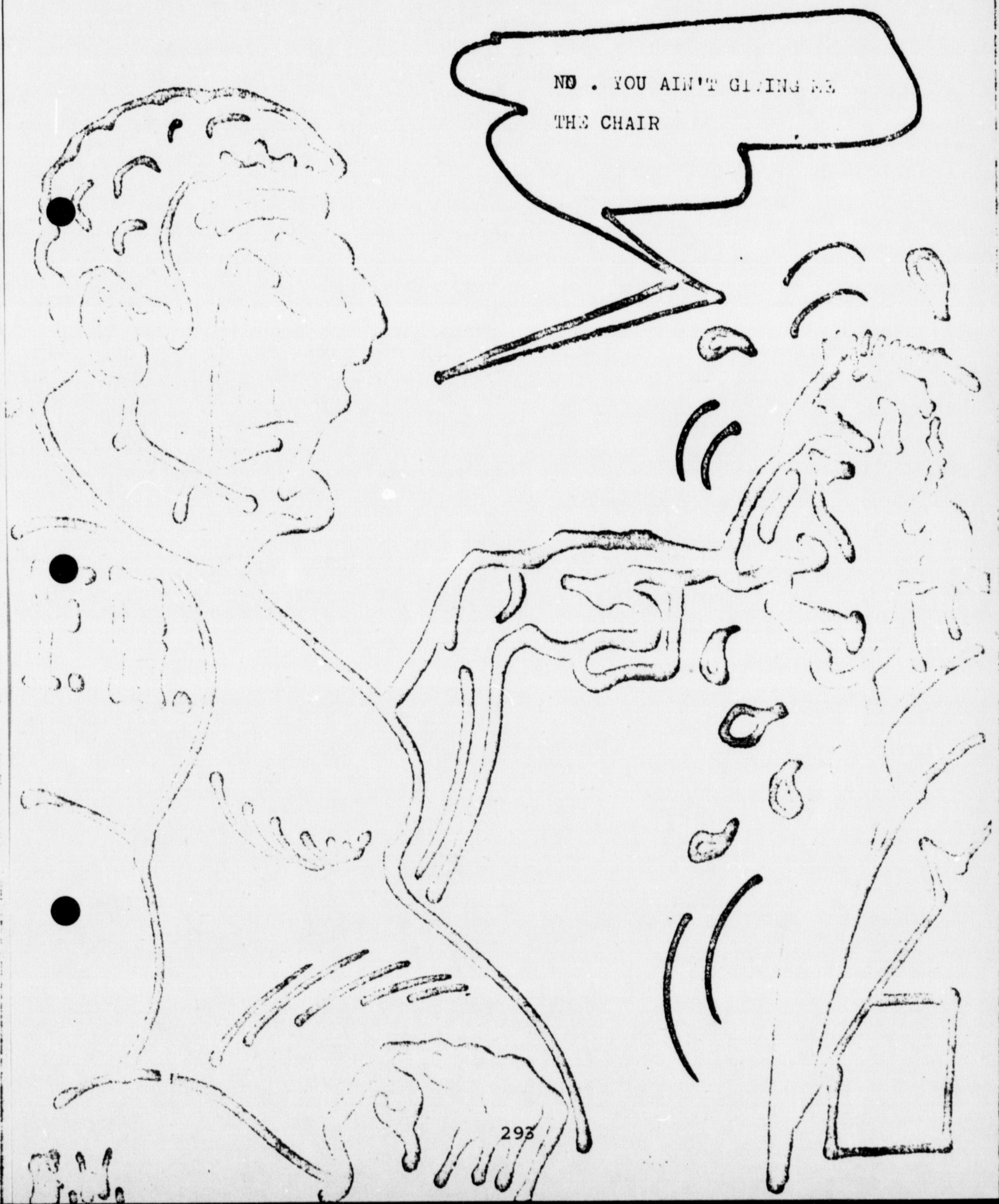
ALSO DESERVING OF MENTION ARE FATHER YOUNGMAN, MR, BASSO, DR. HALL AND MR. NAUCEDER WHO HAVE A DEEP INTEREST IN ALL EDUCATIONAL PROGRAMS.

MR. TOM YAHN AND MR. JOHN TURNER OF THE COMMUNITY COLLEGE ARE VERY INTERESTED AND WORKING OVERTIME TO HELP DEVELOP MORE AND BETTER PROGRAMS.

OF COURSE THE EDUCATIONAL DEPARTMENT WOULD COME TO A COMPLETE HALT WITHOUT THE ASSISTANCE AND TIME DEVOTED BY INMATE RICHARD CROWN OF WHOM WE ALL KNOW.

BY: FRANK HOHIMER

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Liason Committee Meeting
Mr. Moeykens
George Tatro
Dale Bittner
Donald Pool
Chris Prior
John Shuttle
James A. Osborne

October 24,1972

William Mayer resigned from the committee.

The matter of pay is in the hands of the commissioner. Mr. Moeykens will look into the matter . John Shuttle has written a letter to the commissioner and is now awaiting an answer.

Mr. Moeykens stated that he will go along with the committees' proposal for night yard. The decision has to come from the commissioner. We will get an answer one way or the other on Nov. 1st. The times for night yard might be changed a little for the time being but once A block is finished, we could get the old times back.

We're going back to the old rules covering food stuffs brought in on visits. The rules should be posted in all blocks by now. The order states that you can receive a reasonable amount of stuff. Please do not get so much stuff that you have a cell full of stuff going bad. Don't overdo it and this order will stay as it is. If the order has to be changed, we will go back to where you can receive very little of anything.

Mr. Moeykens will look into the matter of wall lockers for the men in B block.

There was some question as to whether the liason committee should remain as is, or should another election be held. James Osborne went around and asked the residents how they felt on this matter. Following is the results of that poll:

Satisfied with the committee	72
wish to have another election	1
don't care	2
indisposed or sleeping	9

Respectfully Submitted
James A. Osborne

J.S.

Liason Committee meeting
Mr. Moeykens
George Tatro
Dale Bittner
Donald Pool
Chris Prior
John Shuttle
James A. Osborne

October 31,1972

Late afternoon recreation will commence on Monday, November 13th, 1972. This recreation period will be from 3.00 p.m. to 4.45 p.m., followed by the evening meal and return to the cell blocks. The reason that this schedule will not begin until the 13th, is to allow Mr. Moeykens time to adjust the staff work day and to notify the Employment Association.

The canteen will be better stocked in the future.

Re; Those residents who are unhappy with the mail delivery. The agreement that was previously made, provided for mail tp be passed out daily except Sunday, from 12.00 noon till 1.00p.m. This has worked and there will be no changes.

Lockers will come out of A block and be put into B block as soon as possible.

More silverware will be provided for the messhall.

There are some residents who have T.V. cable service but no funds. The Luparar will accept donations to help defray this expense.

Respectfully Submitted
James A. Osborne
James A. Osborne

October 31, 1972

ON THE AFTERNOON OF OCTOBER 25, 1972 AT A MEETING WITH THE INMATE LIAISON COMMITTEE, THE QUESTION OF NIGHT YARD WAS DISCUSSED AND I AGREED TO FURNISH A DECISION ON THIS QUESTION ON OR BEFORE NOVEMBER 1, 1972. IN KEEPING WITH THIS AGREEMENT, I AM THIS DATE FURNISHING A DECISION COUPLED WITH INMATE EXPECTATIONS NEEDED IN COOPERATION WITH MY PROPOSALS.

HAVING CONSIDERED STAFF SCHEDULES AND OPERATIONAL ADJUSTMENTS, I PROPOSE TO COMMENCE A LATE AFTERNOON RECREATIONAL PROGRAM FROM 3:00 P.M. TO 4:45 P.M. ON WEEKDAYS, MONDAY THROUGH FRIDAY, BEGINNING ON MONDAY, NOVEMBER 13, 1972. THIS RECREATION PERIOD WOULD BE FOLLOWED BY THE EVENING MEAL AND RETURN TO THE CELL BLOCK AT COMPLETION OF THE MEAL. THIS WILL BE IN ADDITION TO THE REGULAR RECREATION.

IN ORDER TO FULFILL OTHER INSTITUTIONAL PROGRAM REQUIREMENTS, ALL INMATES ARE ASKED TO COOPERATE WITH THE FOLLOWING INSTITUTIONAL SCHEDULE:

(A) Report to your assigned job no later than 7:30 a.m. and 1:00 p.m.

(B) Observe the previous regulation of one scheduled smoke break in the morning and afternoon.

(C) Inmates assigned to the kitchen will have recreation from 9:00 a.m. to to 10:00 a.m. and 1:00 p.m. to 2:00 p.m.

(D) Optional showers for C Block will be available Mond. through Frid. from 12:15 p.m. to 1:00 p.m.

(E) Men living in C Block assigned jobs other than the shops and laundry will shower on a staggered schedule at 1:15 p.m. on Tuesdays and Fridays.

(F) Men assigned to the shops and laundry will be scheduled for showers from 2:30 p.m. to 3:00 p.m. on Tuesdays and Fridays.

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(G) Men in quarantine, unassigned or tagged-in, will be showered in the mornings on Tuesdays and Fridays.

(H) Men living in the Honor Block may shower anytime in their own block, until 9:30 p.m.

It is hoped that this proposal will satisfy the majority of the population, but it is recognized that every man will not be completely satisfied.

J. V. MOEYKENS
Supervising Officer

JVM/er

We, the members of the Liason Committee would like to thank everyone for their support expressed in last weeks' poll. We would like everyone to understand that our purpose is to bring your problems to the attention of the proper people and to negotiate for a favorable decision. Please feel free to bring your problems to any of the six delegates and if possible , we will work something out.

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Form 72 3M-12-68

Date

4-21-72

Official Bulletin

No. 489

Re- NEW VISITING REGULATIONS

DUE TO A TYPOGRAPHICAL ERROR IN THE PRINTING OF AND A QUESTION CONCERNING THE VISITING HOURS ON WEEK-ENDS, THIS BULLETIN IS ISSUED TO CLARIFY THIS:

SATURDAYS & HOLIDAYS	8:30 A.M. to 12:00 Noon 1:00 P.M. to 3:45 P.M.
SUNDAYS	9:45 A.M. to 12:00 Noon 1:00 P.M. to 3:45 P.M.

TO CLARIFY WHAT MAY BE BROUGHT IN BY VISITORS, THE FOLLOWING IS RECORDED FOR THE BENEFIT OF INMATES AND OFFICERS:

1. Reasonable amounts of cigarettes, cigars and tobacco.
2. Reasonable amount of candy, (either store purchased or homemade).
3. Clothing: Sweatshirts (white or gray); Tee shirts; Socks; Shoes; Bathrobes, and any other items approved by the ranking officer.
4. Reasonable amount of cake and cookies.
5. Reasonable amount of fresh fruit, with the exception of berries.
6. Reasonable amount of canned goods, with the exception of juice and fruit.
7. Reasonable amount of cooked food.

WARDEN

JVM/mdt
cc AW
CO AB
CC BB
SF CB
RKS YBB

DATES FILM TO BE SHOWN FOR THE 1972-1973 SEASON

Nov 11 Machine Gun McCain

18 Gun Fight 87 min

23 Paint Your Wagon 133 min

25 The Hired Hand 95 min

Dec 2 Tropic of Cancer 87 min

9 Death of a Gun Fighter 94 min

16 Diary of a Mad Housewife 94 min

23 (5) Easy Pieces

25 Rosemary's Baby 135 min

30 Raid on Rommel ,99 min

Jan 1 Ace High 122 min

6 Two Lane Beach Top 100 min

13 Down Hill Racer 102 min

20 Lawman 99 min

27 Burglars

Feb 3 Bob& Carol & Ted & Alice

10 Catch 22 121 min

12 Backtrack

17 Valdez is Coming 90 min

19 Murphy's War 106 min

24 Stratagy of Terror 90 min

Mar 3 Deserter 100 min

6 I Walk The Line

10 The Sterile Cuckoo 107 min

17 Shoot Out 95 min

24 Deep End 87 min

31 The Italian Job 101 min

Apr 7 Love Story 100 min

14 One More Train to Rob 108 min

BLAH BLAH BLAH: a one act play by Sol Eterri.

Dramatis Personae

Commissioner of Corrections

Warden

Trio of sycophants whose titles and duties are interchangable. (To be known as sycos I,2,3).

Scene: Office of Commissioner. All characters are seated around conference table. Commissioner is speaking:

Comm: "Gentlemen I have called you togather so that you maybe the first to hear the good news."

1st syco: "Oh boy, another raise."

Comm: "Hush up Smith. As I was saying; the sweeping changes so long contemplated within the dept. are about to be realized."

2nd syco: "What's with the sweeping changes? We hiring some more janitors?"

Comm:(glaring) "Why don't you and Smith go play cats' cradle or something and let me get on with the meeting."

2nd syco: "Sorry Boss."

Comm: "Yes, well, as of this date, the State Prison no longer exists."

Warden:(jumping up excitedly) "I knew this would happen! I told em, and I told em. Take away their matches I sez. If they want to light a cigarette, let em submit an interview sheet. But they wouldn't listen at now..... ....."

Comm: (looking at Warden in Disgust) "Can you guys make that a three handed game? No will everybody please shut up and let me finish! Hereafter, the institution will be known as the State Correctional Facility."

1st cyco: "Coo Boss, t ats' great! Just like some of those big wealthy states,huh. Just because we're small, don't mean we ain't got a little class. Boy, that smart assed California with their riots and special investigating committees and their cyanide pills and all that, they think they're so smart....."

Comm: (wearily) "Work hard, they said and you'll rise in the system. I wish I'd stayed a bagboy!"
"Anyway, as I was saying: its' now the State Correctional Facility."

Warden: (Gloomily) "I'll have to get all new stationary."

Comm: "And this is only the beginning! We plan to overhaul the whole penal structure. Now Warden, as the man closest to the problem, what suggestions do you have to offer?"

Warden: "Well.....there's a lot of complaining about lack of recreational equipment."

Comm: "Thats' ridiculous! Why just a couple of months ago, we shipped a load of recreational equipment. Lets' see now, what was it we sent?

Warden: "Three softballs and a weejee board."

Comm: "Right! Thats' not too bad, huh? Theres' a lot of people would like to get their hands on a nice round softball, let me tell you. And if a guy can't have fun with a neat thing like a Ouija board, well I just don't know what.....(voice trails off) "What else Warden?

Warden: "Well. I'm having personnel problems. My guards keep quitting and I can't find replacements."

Comm: "Warden, I know you run a tight ship down there and like to hire only the best men, but we gotta be realistic. Why don't we try lowering our requirements a little? For example-I've always felt that our educational requirements were just a little bit too high and.....

Warden: (Explosively) "Fourth grade too high???"

Comm: "Now, now , Warden; it can't be all that bad. Why I recall my last trip down there I talked to one of your men. Splendid,upright chap. Resolute and dedicated. The kind of man the department is proud of. You remember the one Warden. What ever happened to him?"

Warden: "They stole his whistle so he quit and went back to picking ferns."

Comm: "Hmm..yes, well you can't win em all. Now then Warden, is there anything else that requires our immediate attention?"

Warden: "The hospital needs a new thermometer."

Comm; "There by God! Thats' the kind of talk I wanta hear. Get right down to the nitty gritty, solve them problems sez I! And Warden, I want you to know that you're gonna get that thermometer by George! Just as soon as one of the hospitals throws one out!"

Warden: "Thats' fine Commissioner, but a thermometer ain't gonna solve our problems. If you want my opinion, theres' too much mollycoddling going on. In the old days we never had all these problems. Wire up the old "hot seat" and then watch em snap into line."

2nd syco: "Yeah boss, thats' right! I used to get invited to all the executions, and its' an experience let me tell you! Boy, when they bring that poor slob in, all panicky and trembly and set him in the old seat, and then they put that funny cap on and strap him in ..and ..and..ZAP they give him the old juice and man, how they do twitch and jerk and a little wisp of smoke comes out, and.. WOW,BOY, some of them even have an orgas.....

Comm:(on his feet shouting) "Control yourself man!"
"Somebody straighten that freak out and lets' get on with the meeting."

(All return to their seats and comm. resumes speaking.)

Comm: "Thats' the kind of thinking we want to get away from. Harsh repressive methods are out! For examnle-in the past when an inmate was accused of a breach of regulations, they would simply grab him, throw him in the hole and forget about him. Now under the new system,

an accused man is brought before the Disciplinary Board, where he is allowed to face his accuser, present evidence and cite mitigating circumstances. The board then weighs all the facts and evidence."

1st syco: "Yeah Boss, and then what happens?"

Comm: "They throw him in the hole and forget about him."

3rd syco: (speaking for first time) "I agree one hundred percent with the Commissioner. The trend everywhere is toward more humane treatment of the inmate. We have to bear in mind that these people are not just numbers but individuals. On a recent trip to the prison, I tried to talk on a man to man basis with as many of the inmates as I could. One in particular I remember. Dirty, unshaven, and setting apathetically in his cell, he was the picture of dejection. So without hesitation, I stepped forward, offered my hand and attempted to engage him in conversation."

Warden: "thats' just great J.B! How did he react?

3rd syco: "He called me "Dear" and offered me a candy bar".

Comm:(slapping thigh) "Hoo boy! Thats' rich! Takes one to know one, eh J.B.?"

3rd syco:(losing temper) "Yeah? Well if you heard some of the things they call you, you wouldn't laugh so hard!"

Comm: "Sticks and stones may break my bones.....Go ahead J.B., I can take it."

3rd syco: "Well, I don't like to use that kind of language, but if you must know...they said you were a ..(leans over and whispers in Comms' ear)psst,psst.....

Comm: (jerking back violently) "I am not!! She died when I was just a child!

Warden: (wearily) "I'll have to get all new stationary."

CURTAIN FALL.

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If your troubled and

Discouraged---- Turn to

"Polka Radio"

Happy Music for Happy people

with Bob Opal N. ENGL. NO. I D.J.

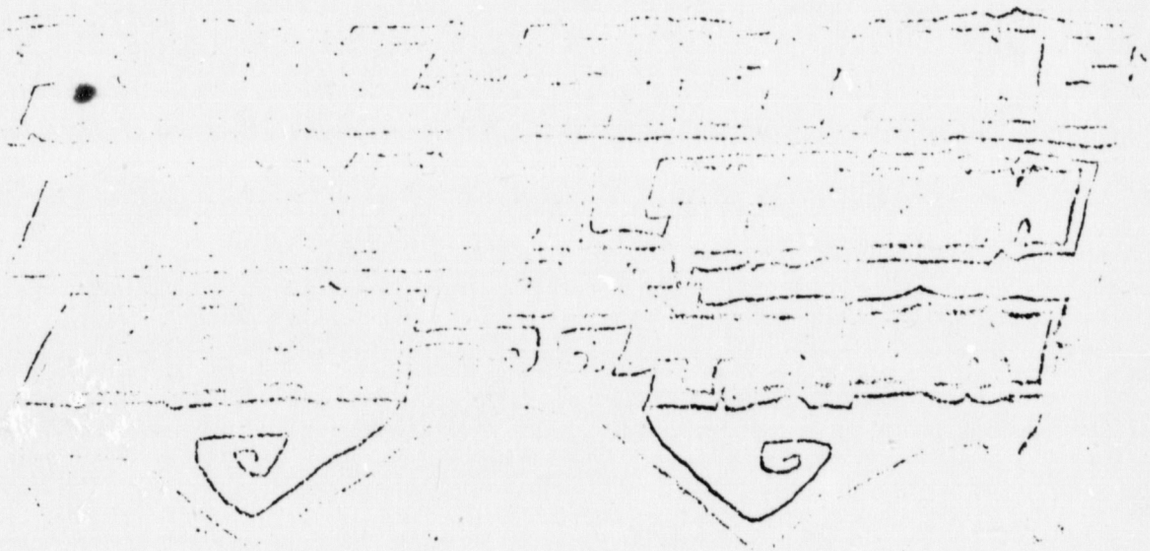
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DEPOSITION EXHIBIT

Vol. II

Issue #6





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TO OUR BROTHERS IN THE CAGE,
WE DEDICATE THIS SEVENTH
ISSUE OF THE LUPANAR.

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S T A F F

Commissioner of Corrections
R. KENT STONEMAN

Director of Correctional Centers
PETER PROFERA

Warden
ROBERT G. SMITH

Assistant Warden
JULIUS V. MOEYKENS

Director of Treatment
JULIUS V MOEYKENS (Act.)

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Farm Reporter Mike Creaser

F A C I L I T I E S R E P R E S E N T E D

St. Johnsbury Correctional Center

Rutland Correctional Center

Burlington Correctional Center

Woodstock Correctional Center

Lakeside Diagnostic Center

Weeks School

St. Albans Youthful Offenders Center

Vermont State Hospital

Women's Reformatory — Woodstock Correctional Center

All residents of any correctional facility, the administrative segments, as well as the people making up the free society, are staff members of this paper in essence.

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Editorial

One of the many problems facing us today in correction facilities, in my opinion, is the vast lack of communication. Through this publication we hope to close some of the gaps that appear and do without a doubt hinder any form of rehabilitation that may become a reality.

Ask yourself, "How is this possible, in this day and age, with all the advanced methods of communication, do we have so many problems of communication"? It seems that we have very little trouble communicating with our astronauts, even when they are on the surface of the moon. But, when we here on earth try to communicate with someone only yards away, we find all kinds of problems. Of course, the "so-called" - "buck passing" is an everyday item on our daily agenda.

In corrections we find a lot of these problems, either because no one is authorized to make a decesion; no one dares breach that bridge for fear of reprimend from their superiors; because a telephone call to obtain information for an individual seems only a last resort, or for so-called, security reasons.

"Buck passing", in the system, seems to be the orders of the day, everyday. In many cases, another favorite is the statement, "I'll have to check with someone". The someone named, always seems to have a couple of days off. Whenever he returns for work, the question has been forgotten, so the individual directs the original question to him, saying that he has already asked someone else and was refered to someone else and so on. More often than not, by the time the individual asking the question has received any type of reply, he is so bitter and filled with frustration that he feels everyone is against him and gives up. He either bottles it up inside himself or explodes. Have you ever been on a merry go round?

It seems to me that everyone deserves an answer. But, there is also another point to ponder in saying this. Such as: When an individual is given the reply to his question, will he be man enough to accept the answer given, or will he have a temper tantrum?

In striving for an answer to some of the problems in corrections today, we need to do a lot of research. We have to keep our minds open for ideas and comments. These ideas and comments hopefully will come from people all over. Co-operation is needed, not only from the residents of all the state correction facilities, but from the administrative segment, lawyers, judges, legislatures and yes, you the people on the street.

The days of tight-lipped security, hopefully are over. Tension, in my opinion is a direct result of frustration. Who in the world today, would like to be passed around like a basketball during a game? Would I be correct in answering - no one?

Why do people, who are trusted with our welfare, attempt to avoid interviews which may lead to direct answers having to be given? Hopefully, someday in the near future some of these problems can be ironed out. Who, will be the first to take the giant step and break the ice and all of the old traditions?

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Have any of the advisors ever thought of breaking the ice and seeing if the administration representing the security of the facilities, and the treatment element working together for the purpose of seeing if there is such a thing as rehabilitation? Who in corrections today knows just where they stand at any given moment? Again, would I be correct in answering -no one.

It seems very apparent that in the last few years, there has been a very definite turnover in the custodial section of corrections. This is, I believe, also attributed to the lack of knowing just where one stands at any given moment.

So, it is not just the residents of these facilities who have problems; like gaps in communication. It's also the lower segments of administration personal. It is apparent that those individuals who are members of the Vermont State Employees Association, (V.S.E.A.), do not get the backing they need when problems they are facing are brought to light. What good is an association that won't do anything but listen with one ear open. I, personally feel that the Association should start acting as well as talking.

After all, when a custodial officer is having problems with his job, it is his human nature to release his frustrations somewhere. So the likely prospect is the resident of the facility. Even a dog, (sometimes refered to as man's best friend), bites back if he's cornered. I maintain that the residents of the correction facilities are the bumpers of these frustrations. Let's open up this gap in communication and get together to work out something to end these problems. Equal rights whould pertain to everyone, but do they?????

Communication is hell for some people. Mainly because if people said what they felt, then there would, more likely than not, be a great deal of reprimends and stigmas, because of what people refer to as so-called making waves; or rocking the boat.

When men cannot sit down to an intelligent conversation, and discuss problems, without fear of reprisals, then the world is in sad shape. If you don't believe it, look around. You'll find it without looking very far. Look in the mirror sometime. Maybe you'll find it that close.

Many people's slogan has been, "Don't quote me". Let's get with advanced terminology and have a positive approach. Try adapting to the slogan of: "He who has a voice to raise in protest and does not becomes an accomplice to the act". Quote of: Dr. Thomas Murton, professor of criminology at the University of Minnesota.

James J. Labor

James J. Labor - Editor

We reprint this Editorial in view of the recent articles appearing in the Burlington Free Press concerning living and working conditions within the walls of this Facility. Basically most statements about all the bull that the guards put us with from the "top" we emphasized this 7 months ago. But, apparently no one listens.

We also notice that whoever is putting the information into these articles appearing in the news-papers, is very shy of actual reliable information. If informations is being given to the papers, we sugrest that the truth be given.

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HEY !

Denny Allen

Last month the article pertaining to the dismal attempt of this prison to meet the needs of it's drug users was very mild in nature. This writer wonders if he'll be able to rationalize the tenor of that article as again it seems these needs are ignored.

To send Vermont users to other States is not the answer to Vermont's problem. It is about time the people of this State realize we have a serious and spreading problem. Testimony to this effect is available in about sixty per cent of the cells presently occupied here. Given a small amount of time, this percentage will increase. The longer the powers that be hesitate the more genocide they are responsible for. To kill by ignoring is as final an act as that done by a gun.

While people sit, debating if there are abusers in sufficient numbers to merit concern, the youth of our State continue to kill themselves. Or blow their minds. Well, folks, these are your little boys and girls. Love them or lose them.

As corrections forges ahead (?) they'd best be prepared to incorporate a large spot for this new phenomena into their plans. The good old days are history and it's a brand new day with new problems. Yesterday's solutions and methods are just that---yesterday's. Inmates no longer hope for alternatives, they demand them. So often, the keeper cannot control his flock. He is alienated by them; them by him. It's a long road so let's start the trip.

" UP AGAINST THE WALL "

[Welcoming speech to the Rolling Stones; Los Angeles, Calif.]

"Greetings and welcome Rolling Stones, our comrades in the desperate battle against the maniacs who hold power. The revolutionary youth of the world hears your music and is inspired to even more deadly acts.
They call us dropouts and delinquents and draftdodgers and punks and hopheads and heap tons of shit on our heads. In Viet Nam they drop bombs on us and in Amerika they try to make us make war on our comrades but the bastards will not escape the blood and fire of the anarchist revolution, your music makes them believe it.
We will play your music in rock 'n roll marching bands as we tear down the jails and free the prisoners, as we tear down the State schools and free the students, as we tear down the military bases and arm the poor, as we tatoo BURN BABY BURN ! on the bellies of the wardens and generals and create a new society from the ashes of our fires.
Comrades, someday we will listen to your music free from the tyranny of the State, on the rubble of police stations, under the hanging corpses of priests and under a million waving red flags waving over a million anarchist communities." LONG LIVE THE REVOLUTION !

[Reprinted from The American Scholar, Autumn, 1967]

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NOTE: There has been interest shown in the possibility of classes in political awareness through the education department. Any persons with a desire participate in such a program see; Denny Allen, Jim Clothey or Mr. Tusler.

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LEGAL BARRICADES

by: Jim Clothey

The trial of three prisoners indicted on counts of kidnapping and other crimes during the October, 1970 riots at the Manhatten House of Detention for men has heard argument to the point that the riot was justified.

Attorneys for three of the seven defendants have taken the position that because the inmates had "no other means" to protect themselves from "offical murder, beatings, fear, pain and general degradation" they were justified in their actions.

It seems to be the general consencus of those outside the walls that, men confined to penal institutions must abide by the rules laid down for them or suffer penalties that are decided by prison administrators. Little consideration is given to the harshness of such penalties or to the type of men that decide what penalties to impose.

Physical abuse as a deterrant to rule violations is generally regarded as severe but little thought is given to the mental anguish imposed by prison officals on the men they confine. In many cases, this type of punishment is much more severe than the old "beat'em with a stick" procedure. Mental abuse breeds frustration and frustration breeds reaction; reaction in prison is known as riot.

There is no doubt in this writer's mind that prison uprisings are very often justifiable. When a man is pushed to the breaking point in his frustrations he either lets loose or he withers and dies. If he withers and dies then he ceases to become an individual and joins the herd of nowhere men. If he does indeed stand to be counted and rebels against an un-natural enviorment such as prison then he steps to the beat of his drummer and no one can justify his condemnation.

Prison rebellions may seem to be based upon insignificant issues to the general public but to a man denied the major enjoyments of life, little things mean a great deal. A man has to fight for his individuality in prison. He struggles to find at least one thing that makes him different from the rest of the penal community. By prison rules he wears the same clothes as everyone else, eats at the same time, goes to bed and gets up with everyone else. He sees the same movies, plays the same games and talks the same language, he is, for all intents and purposes, the same man that every cell in the prison holds. In prison there are but two things that allow a man to express his individuality, his religion and his politics. His preferance in spiritual beliefs are are generally condoned by administrators as long as they are not geared to some "hippie-weirdo religion". His politics are another matter altogether.

When a man must speak out and is denied the avenue to do so then he looks for other roads. In prison the only way open to him after the channels have been closed is rebellion. Prison officals understand rebellion, it puts fear into them, they understand fear because they deal in it. They understand threats and demands because they threaten and demand every day. They don't understand individuality because they are not individuals. They are simply little cogs in a big machine and they are trained to perform one job that helps the machine to operate.

Whether or not prison rebellion is legal as far as the system is concerned will have to be decided in the system's courts. Whether or not prison rebellion is morally legal can only be determined in the minds of the men who rebel. Perhaps the more important question is whether or not the system itself is morally legal.

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"WHO'S PHASING OUT ARTS AND CRAFTS ?"

by: Carroll L. Perry

I dare say that every resident of this institution is aware of the rumor that has been running rampant here for the past three or four weeks, that the Arts & Crafts Shop is being phased out.

This is the only program, the only job assignment in the institution where a man can better himself both financially and rehabilitation wise.

To be able to build and create with one's hands is a very satisfying experience. It keeps the residents mind occupied and it keeps his physical being occupied, thereby helping to pass the time with the least mental stress possible for one in prison.

Secondly, the financial aspect of the Arts and Crafts shop is also good. It gives the resident the opportunity to earn spending money for his essentials and vices and even to make a little money for his future release.

So, whos phasing out Arts and Crafts? To this writer it seems to be nothing more than a rumor. If it is being phased out, then the person responsible could not possibily be a rehabilitation minded person. He would have to be a person of petty jealousies in that he cannot bear to see a poverty stricken man rise up and be totally independant of the State for his necessities while here and after his release.

Of course we all know that there is a certain element in the administration that would like to keep this facility as it was ten, twenty or thirty years past.

While I am on the subject of arts and crafts there is one more thing I should mention to my fellow residents. You will notice in the new visiting regulations that have already been implemented, there is a provision for a crafts showcase in the visiting room. This, even though it was approved on paper, is not a reality through no fault of this writer. I offered to do whatever building is necessary myself. The fault lies with the "Occupational Therapist" Mr. Boggis who doesn't care to take the initative.

And so, as for phasing out Arts and Crafts; lets wait and see who the 19th Century culprit is, if any there be.

COMMISSARY

The officer in the Canteen has told me that such things as after shave cream, canned goods, mustard, etc. are not allowed....is this true ?

It seems to me that there are after-shaves that contain no alcohol. What if a man doesn't like the meal being served, there is no food sold at the canteen. The officer tells me that he is not allowed to buy other things. Is this a fair thing to do? It wouldn't be too bad <u>if</u> a guy had someone to bring him food once in a while, I for one don't.

It was said that there isn't money enough to buy more goods for the canteen from the wholesaler. If this is the case; will you let me buy out the canteen? I will then be able to enlarge it as far as stock goes, and will be willing to have it open during all free time. The canteen in Maine is run by inmates for the inmates and is open during all free time. Further, there is a cart that comes by after lock-up at night for those who work in the mess hall and others who missed going during the day.

The canteen man wouldn't need to buy a lot of one thing. He could buy 1 or 2 of each item and then refill as needed. There doesn't need to be a big mark-up on items. If the cost was raised by only a few pennies men would buy more here and not send home for things.

304(h) J.W. Bishop

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THE STRUGGLE INSIDE

by Richard J. Cronin

No one in America today is more a slave than the inmates in American prisons. Yet in a few places, the struggle against class and racial oppression is as intense as in our prisons.

The struggle against the State by prisoners has only recently hit the public eye with the murders at Attica and San Quentin. These atrocities are only the boldest aspects of an inherently violent system of justice which systematically and continually oppresses poor people, third world people, women, youth and others who reject the roles imposed upon them by this society, behind a facade of "REHABILITATION". The prison system brutally attempts to mold prisoners into patterns of obedience and passivity. Prisoners who defy these assaults on their humanity are subject to beatings, drugs, inhuman "behavior modification" and brain surgery schemes.

Despite the incredible obstacles to organizing, the prison movement has kept pace with political events outside. Over the past two decades, prisoners demands for food and shelter to demands for civil and religious rights and finally to a general challenge to the prison system have moved progressivly with the times.

Today prisoners across the country are attempting to organize under the most severe conditions of intimidation and repression.

WE NEED AND ARE SEEKING YOUR HELP

++++++++++

LETTER TO THE EDITOR.....

Dear Jim;

I recall a list of items that could be bought at the canteen in the last edition of our paper. I am quite annoyed that 85% of the items listed are not available in the canteen. Could you please explain why not? Also I feel that this is the only luxury we have and this matter should be brought up to the proper people as soon as possible.

Thank You
Richard Cronin

****

ED.....

As you will note, there is an article within this issue concerning the commissary. It is written by Wayne Bishop.

We will bring this matter to the attention of the administration and see what can be done to enlarge the commissary's items.

J.J.L.

****

Please send me 12 months of the Luparar
Enclosed find $5.00

The LUPARAR
Box 26
Windsor, Vermont

NAME_____
Street_____City_____State_____Zip_____

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:::EDITOR'S NOTES:::::

Those recently passing their High Schoo Equivalency Exams were:

Michael Garlarneau
Leonard Pease
George Tatro
Gerald Willard
Peter Ziemba.

Giving the exams was Mr. Orlando Tusler. Correcting the exams was Mrs. Madeline Findson, the State Testing officer. Mrs. Findsen, commented on the fine scores received by the men. Insidentely, all men who took the exams passed. Congratulations to all of you for your achievement in higher education.

Contributions to the Lunarar... to date:::

T. Wesley Grady	$5.00	Mr. & Mrs. J. W. Clothey	$$5.00
Dorothy Allen	$5.60	Richard Jenks	$10.00
Orlando Tusler	$5.00	Delbert Powers	$10.00
Cynthia Luke	$5.00	Robert Opal Fan Club	$10.00
John Schuchardt, Esq.	$10.00	Margaret Federico	$1.00
Robert Opal Fan Club	$10.00	Patricia Mack	$5.00
Lt. Governor-John Burgess	$5.00	David Tucker	$3.00
Sally Grigrs	$5.00	Michael Terno	$15.00
Charlena Brown	$5.00	Nancy Walker	$10.00
Peter Profera	$10.00	Christopher St. John	$10.00
Mr. & Mrs. David Cluchey	$5.00	Donald Lewis	$5.00
Clyde Creaser	$10.00	Windsor Library Assoc.	$5.00
John Bassler	$5.00	Tom Baynes	$3.00
William Morrissey	$10.00	Miriam Fitts	$5.00
Glen Goodall	$5.00	Robert Opal Fan Club	$10.00
Mrs. George Tatro	$5.00	Carol Lewis (Mrs. Robert Henalker)	$5.00
Dept. of Libraries	$3.50	Dorothy Allen	$5.00
Mr. & Mrs. Lloyd Hill	$5.00		

Total as of 5/30/72 $138.84
In Account

POWER TO THE PEOPLE....BABY !

The ghost of George Jackson smiles as he walks the halls of San Quentin today. A true sister in the struggle to liberate the masses from the tyranny of our Big Brother System went free today. Angela Davis was aquitted by a jury of her peers. Does that tell you anything "Tricky Dick"? The ghost of J. Edgar begins to sense his time has truly passed. RIGHT ON !

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For those of you who are not familiar with the operation of the radio room, please be informed that there used to be a television there so that some of the musical and variety shows could be played into the blocks over the in-house radio system. This provided some extra enjoyment to those who do not have their own televisions. Well, said television is no more. Our loving and compassionate keeper took it into his head that perhaps some of his officers were watching it at night...so he has taken it under his protective custody. Evidently, there are two things to be understood by this action: 1. That the residents must stand punishment for the acts of the officers, and 2. That not only can't the administration keep control of the resident population, they can't even control their own employees!

Two of my Brothers have been granted an extension of life by the May Parole Board. Dennis Allen and Phillip Creaser will soon leave this haven of rest for the real world. I want to thank all of the members of the board for doing the right thing and thank Denny and Mike (Phillip) for being what they are.

" I'm going to have Bill Morrissey of A.P. come down to show you people how to run a paper."...Warden Smith to the Luparar Staff.

Quote from Officer Jackson pertaining to the bloodhounds used in the search for two residents during alleged escape: "One of the hounds was so old they had to help him out of the truck."

CLOTHEY'S COVETED CITATION; a monthly award for excellance in service to a penal institution goes to: Lt. Kelley of the security staff for disallowing a resident a visit with an ex-resident even though the rules allow it. Would someone please show him a rule book that was printed after 1900, about the time he came to work here.

After 9 escapes from the maximum security section of this institution, within the past two months; I was beginning to think that Vermont State Prison was the only state prison that was losing men from within the walls. Not so! San Quentin, that formidable monument to man's misery has been cracked. Jacob C. Zitzer, 27, doing a term of 5 to life went over the wall and down the road. I guess you can't keep a good man down.

ROLLING STONE, the rock magazine is looking for letters from political prisoners and if possible photos to be used in an article. They want the facts of your case, prison conditions and reflections on anything else you want to talk about.
Although penal administrators deny that political prisoners exist in their institutions when in fact there are many....persons confined for constitutional protest, refusing to make war, political activists busted on paper charges to get them out of circulation and persons with more neutral charges but who are detained by parole boards because of their political activity in prison.
Their address is...Rolling Stone, 78 E. 56th St. New York, NY 10022.

DAWN
COLD FLOOR
BAD TASTE
EXHAUSTION;
REMEMBERING...
YOU
YOUR WARMTH
YOUR BREATH
YOUR YOU
WONDERING...
COULD I EVER
CARE AS MUCH
AGAIN ?

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SPORTS?????

With the summer upon us there is a bit more action in atheletics at this haven of rest. The weight lifting crew (muscle beach boys) have been working out since early spring at a rapid pace. The Fox has trimmed off several pounds and Skip tells me that he will soon look like the cover photos on Strength and Health magazine. Jerry is probably the biggest surprise among the weight litters. He is showing signs of developing some well-shaped muscles; of course at his age it is more like gristle.

On the softball field there have very few surprises; we still haven't found anyone who can play. The last game as of this writing was played against the farm who can't play either...the score: 30 to 5 our way, a real cliff hanger. There is an interest in playing outside teams again this year. If you know of a team that would be interested in coming in to play, contact Bernard Shaban at the prison. I am told that 10 days notice is needed.

There is a renewed interest in handball this year and some fine talent has been seen on the court. Probably the best doubles team is that of John Emerick and Phil Andersen with John undoubtedly the best singles competitor. There is some talk that Chico Sanville can take John in singles but as yet I have not seen them play each other.

BUILD YOUR HOUSE OF BRICKS

by Billy Fox

Basic Experience has proven that if two or more persons witness the same event, each witness will observe the same happening in different ways. Thus, if each witness is sworn to give their version of what happened, the testimony will vary to some extent.

Not so with "piggy"! Regardless of how many uniformed protectors of society are called to testify about an event, their testimony will be identical.

Police perjury is a standard joke at a jury trial. The Judge just smiles and nods his judicial head while each "Charlie McCarthy" gets up and takes the oath and proceeds to lie his curly little tail off.

If defense counsel objects too strongly to the farce the Court is shocked and warns counsel that he is bordering on insulting the Court's integrity. Of course here in Vermont you don't have to worry about a member of the Bar objecting to anything.

90% of the "Battling Barristers" of the Green Mountain State go into a catatonic state if they are required to actually try a case before the people. God help them if they ever win a case, this would mean certain censure by the Republican Party if not disbarment proceedings.

Yet, these bigots cannot understand why there is disrespect for the law in general. It is too much for them to fathom that the average intelligence of the American is increasing and the youth of our time do not buy the philosophy that "piggy" may break the law under the pretense of enforceing it.

Piggy had best beware, because the time is coming when the Courts will not be asked to uphold the Constitutional rights of the people, the people are going to take down the Courts and start from scratch again.

If you don't believe me, just read history instead of crime magazines piggy!

"We sat around all morning trying to decide what to do with your case. We couldn't come up with a program, can you?"....Counselor McCarron to a resident.

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LETTERS TO THE EDITOR

Dear Jim;

A line to let you know that I am still in existance. Received your last issue of The Luparar and was amazed at it's progress. Keep it up, brothers of Vermont State Cesspool. Remember, time is your only enemy. I would also like to commend your staff for their determination in making the Luparar a success. Keep it up because society will fail to open up their eyes to the problems at Windsor unless the sleep is wiped from them. In this case the sleep seems to be the ignorance and refusal to recognize you people, and people in any form of incarceration as human beings.

It really makes me bitter to think that the administration at Windsor tried to say that the "beautiful" bid for freedom was made by use of a torch that was smuggled into the "militant" part of the institution. Except for the lack of accepting responsibility this isn't anything new within the administration. Those torches were in "B" Block when I was there back in February! The administration can thank Mechanical Repair for that bit of negligance.

Once more I wish to thank you for giving the people of this society a closer insight to the problems and frustrations that are widespread at Windsor---Right On! Tell Mike Creaser that I would have been the high scorer in the basketball league if I were still there.

Robert L. Frazier
Woodstock Correctional Ctr.
Woodstock, Vt.

INSTITUTIONAL LIBRARIANS MEET AT WINDSOR

On May 2, 1972, Librarians from Vermont Institutions met in the Chapel at Vermont State Prison to discuss the needs of each institution and how to best serve their respective populations. Represented was the Veterans Hospital, Brattleboro Retreat, Brandon Training School, Weeks School, Vermont State Hospital, St. Johnsbury and Woodstock Correctional Centers and the State Prison.

The meeting was moderated by Orlando Tusler of the Education Department at the Prison and Dorothy Allen from Vt. State Libraries in Montpelier. Also in attendance was Dr. N.B. Hall Jr. PhD, the Prison Librarian.

The Education Program at Windsor was explained by John Wood, Tom Hettinger and Mike Creaser. Jim Clothey of the Library Staff called for donations of politically orientated books to the prison and explained the policies and purposes of the prison publication "The Luparar".

Warden Robert G. Smith was represented by Capt. M.F. Toomey.

Following the meeting two films were shown.

****

Burning villages, that's politics
Burning flags, that's unpatriotic.

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WEEKLY SCENE: Somers, Conn.

Cliff: I notice that you have contributed a full page to the Penal Press World. Very good. Look carefully at your copy of the cover of our May Issue. You got it half right. We are from Vermont, not Walla Walla, Washington.

I have checked my copies of the Scene, and I still find very few with any comments on the penal press. Hope you continue with your full page comments on the penal mags.

Would it be asking too much for you to give us here in Vermont the credit for our cover???

We hear that some of the residents there are backing their convictions toward Penal Reform. We need more supporters on that subject, but who knows what is in store for the future.

Jim

THE VOICE,: WALLA WALLA, WASHINGTON

H E L P
P E NAL W O RID

If anyone has heard from the residents of Walla Walla, Washington since they printed the Voice, with their requium, please let us know.

We have sent them a copy of our mag, and there were three letters sent to them in the last two months. As of yet we have received no reply at all.

Could it be that they were shut down because of the Administration or because of financial difficulties.

We, who are on the penal circuit, look forward to the progressive steps that are being made there with their own self-government.

If they are shut down because of financial difficulties, maybe we can get something going in the penal circuit to get them started again.

The following is the Requium they printed sometime the first of the year.

REQUIEM?

The Voice, one of the very few vestige left over from the good old days when self-government meant 75-25 is threatened with extinction. It first started when His Honor Pasco told us that he and educational Director Codd would request that the paper be sent to them 5 days prior to publication (Please be assured that it wasn't for the purpose of correcting typographical errors!). The Editor answered Pasco that he would "eat?" the rag before permitting anyone to censor it.

Two days later we were told that we were broke. A quick survey of our finance revealed that Supreme Business Manager-Daniels had been "dumping" our revenues into the 1973 budget. Tell me that this was a bona fide mistake. However, the Voice will live, if we have to print on borrowed toilet tissue. Keep sending your advertizing!

Barrist (The Voice)

STRAY SHOTS: Ft. Leavenworth, Kansas::::

Not a bad job on the layout. We enjoyed your fairy tails very much. We would like to hear more about the daily living conditions there. Do you get many programs there??? The ones that are beneficial to you.....

NOTICE TO ALL PENAL PRESS MEMBERS::::

We have been receiving many papers addressed to the, "Green Mountain Graphic". That paper is no longer printed here. It went out with the old ideas, and articles being printed about a walk in the woods. The Luparar is the only mag printed here.

Appeared in
June Legacies

JUNE 7, 1972

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RESIDENT-LIAISON COMMITTEE

IT IS SUGGESTED THAT A RESIDENT-STAFF LIAISON COMMITTEE BE FORMED FOR THE BENEFIT OF THE STAFF AND RESIDENT POPULATION IN GENERAL. IT IS FELT THAT SUCH A COMMITTEE WOULD WORK FOR A MORE EFFECTIVE INSTITUTIONAL COMMUNITY, IN THAT IT WOULD ALLOW RESIDENTS AND STAFF MEMBERS TO DISCUSS MUTUAL PROBLEMS AND FEELINGS IN AN INTELLIGENT AND PROPER MANNER WITHOUT CONSTERNATION CAUSED BY THE DIFFERENCE IN POSITION THAT IS OBVIOUS AND IT WOULD CAUSE A BETTER SOLUTION TO PROBLEMS BY PROPER MUTUAL COUNSELING RATHER THAN INDIVIDUAL ACTION. IT IS MY BELIEF THAT THE RESIDENTS AND STAFF MEMBERS MAKING UP THIS COMMITTEE SHOULD BE SELECTED WITH THE IDEA OF COMPLETE AND UNBIASED COOPERATION. IT IS FELT SUCH A LIAISON COMMITTEE COULD RESULT IN BETTER UNDERSTANDING OF MUTUAL PROBLEMS BY MERELY SEARCHING AS A VEHICLE TO DISCUSS PROBLEMS AND SEEK SOLUTIONS. SUCH A COMMITTEE SHOULD PROVIDE, ON A REGULAR BASIS, MEETINGS IN AN APPROPRIATE AREA.

AT THIS WRITING, I HAVE NO FIRM PLAN AS TO SELECTION OF REPRESENTATIVES AND WOULD WELCOME SUGGESTIONS REGARDING THIS FROM RESIDENTS AND STAFF PERSONNEL.

ROBERT G. SMITH, WARDEN

CC RKS
CA
JVM
A. CAPT. MAYO
LT. SILVA
LT. TOOMEY
LT. R. BASHAW
LT. KELLEY
LT. PIERCE

CC LT. SHAFER
LT. COOLEY
DR. N. HALL
R. BASSO
REV. YOUNGMANN
FR. HASKIN
L. NAUCEDER
O. TUSLER
A. MILLER
K. CRAM

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GEORGE C. BROCKWAY, CLERK

JANE W. NORMAN, DEPUTY CLERK

STATE OF VERMONT
WINDSOR COUNTY CLERK'S OFFICE
WOODSTOCK 05091
TEL. 802-457-2121

June 5 1972

Robert G. Smith, Warden
Vermont State Prison,
Windsor, Vermont 05089

Re: Filing Petitions for Writs of Habeas Corpus and Petitions for Review of Sentence & Post Convic[illegible]

Dear Warden Smith:

Will you please inform the inmates of Vermont State Prison [illegible] House of Correction, that when they file a petition for Writ of Habeas Corpus or Petition for Post Conviction Relief or for Review of Sentence, that they must file three (3) copies along with the original in order to comply with the Court Rules.

We shall be grateful to you to pass along the above information. The copies are necessary in processing the petition for hearing by the Court.

Thank you very much.

Very truly yours,

George C. Brockway
Windsor County Clerk

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I am THE PRISON

by: Philip Creaser

"I am society's collector of debts and my purse is the bottomless maw of time, insatiably storying the payments days, implacably totalling the months and the years. I come and look upon the faces of these I hold and see thereon the reflection of my image engraven as a deep and final proof of society's inadequacy, of man's inhumanity. I am gut-scratching anguish destroying the man who is, with desperate hope, waiting for the letters, the visitors, that never come; yes I am the prison! Where in the smothering confines of a steel barred cage, crashed with the weight of inhuman reality, where in the endless emptiness of the days and the shattering loneliness of the eternal nights, repeat and repeat and repeat my message endlessly."

****

Above are the words of Richard Hunt, inmate of the Arizona State Prison. He is, quite literally speaking, for all the prisons of this country. The prison portrayed by this poem is the reality of the hundreds of thousands of persons who are incarcerated each year in this country's jails and prisons. There is another reality, this reality is the awakening of the truth, "the problems of prison." The problem at Vermont State Prison is two things, communication and the administration. Both can be and some day will be blossoming like a new and a young administration and an inmate will be able to ask what is true and will be told, only this time not a lie!!

I am at this time at the Vermont State Prison farm, ready for society only I cannot eat without a guard, I cannot sleep without a guard. We have a guard when we play ball or when we work. Some of us even have a guard when we use the "Head". Yet, we are what the administration calls "TRUSTIES"! Please do not get me wrong, if you are at the farm it is a little better than the main prison but not that much. It is better for your visits and for you when you go to the parole board. There is more security here than at the main prison. When someone runs away from the farm it is only one or two while at the prison 8 or 9 leave at a time. I do not have to write about it, "Society knows what is true"!!!

" What I'm concerned about is not simply the withdrawal of troops from Vietnam but the withdrawal of American power which is preventing people across the world from making their own decisions."

....Tom Hayden

" It has been estimated that 90 per cent of all convictions in this country are by the defendant's plea of guilty. Without plea-bargaining, the entire criminal justice system in this county would collapse."

.....Prof. Peter Zimroth
N.Y.U. Law School.

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Hands.

ARNOLD ARMY

ONLY COPY AVAILABLE

"...THANKS TO 5 YEARS FOR LISTENING TO.....

POLKA RADIO PROGRAM

WITH

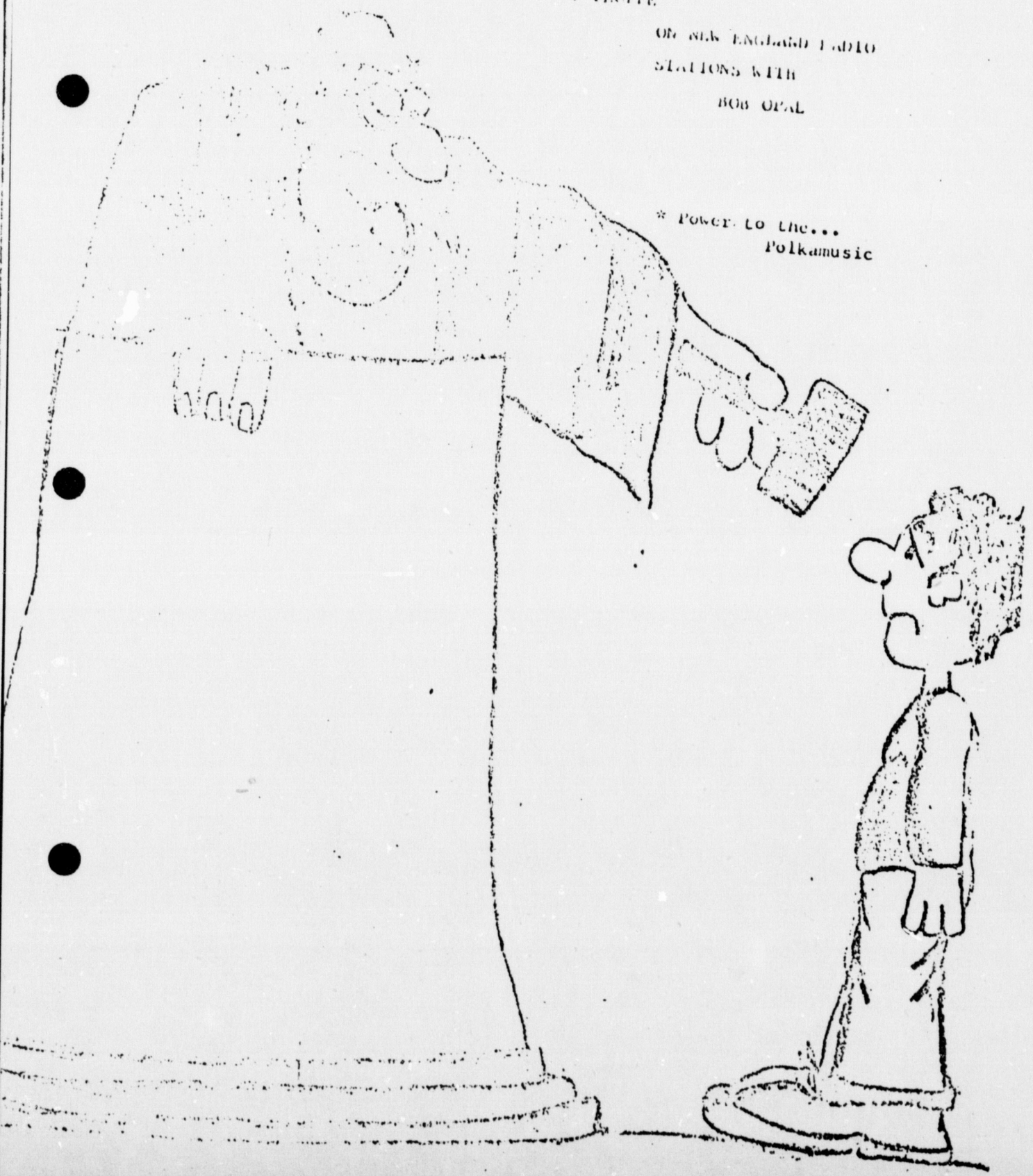
HAPPY MUSIC FOR HAPPY PEOPLE

ON NEW ENGLAND RADIO

STATIONS WITH

BOB OPAL

* Power to the...
Polkamusic



In last months issue we printed the results of a meeting held with the Warden on April 14, 1972. The Editor met with the Warden in hopes that there may be some added answers to those given last month at the meeting. The following is the results of that meeting. Questions 3-6-9-10-11-12 and 13 were discussed.

3. Can the radio system be improved?
ans. If there is enough money in the athletic fund we will purchase another new radio.

6. Can there be "free-time" during yard period for "C" block?
ans. There will be no change at this time.

9. What is the status of the Arts & Crafts showcase in the Visiting room?
ans. No objection as long as it is co-ordinated through Mr. Bogatis and not too much room is taken up. Keep in mind the number of visitors in the Visiting room at one time on week-ends especially.

10. Can the commisary be opened during night yard?
ans. Not at this time as we are very short or officers at one time. Also note that ice will be given to the blocks during the summer months.

11. Can a resident be present when his quarters are being shook down?
ans. I will bring this to the attention to the staff and see if this can be done. The only problems I can forsee will be the cells belonging to those who work outside.

12. How do you feel about a grievance committee?
ans. I am against a grievance committee. But, I am open to ideas about creating a liason committee. I would welcome ideas from the resident population on this subject. Possibly representatives elected by the resident population.

Anyone wishing to give any ideas, opinions, viewpoints etc., about how a committee should be made up and the guidelines they should follow, please submit them to the Editor. We will coordinate these ideas and submit them back to the resident population for your approval. From there it will be submitted to the Warden for his approval.

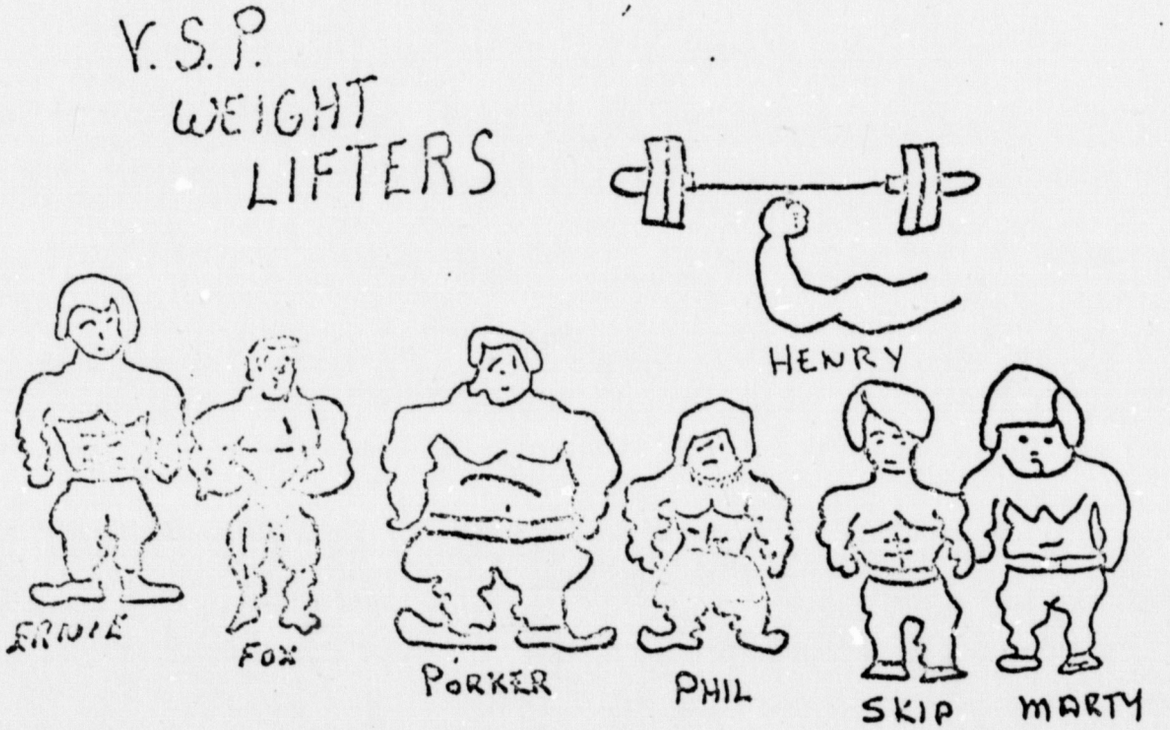
13. Can the paper get office space where all members can make use of it?
ans. At this time there is very little chance of any space being available. As the buildings division is doing some remodeling and in the very near future there will be very little available space because of the renovacations being done here.

NOTE: Begining next month it is very possible that we may be running an article in the paper concerning the number of persons transfered to the Correctional facilities and also the number of residents granted parole, deferments etc...

NOTICE

Recently, Warden Smith met with personal from the Buildings Divisi n and from that meeting the result is: That priorities were set. At the present time, beginning shortly after July 1, 1972, work will begin to install new toilet and wash basin combinations in C-Block and B-Block. Hot water will be piped into the cells also.

The second meeting with the Buildings Division will be held June 30, 1972 in the Commissioner's office.



By SKIP

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF VERMONT

THE LUPARAR; JOHN SHUTTLE, EDITOR OF LUPARAR; CRAIG MURRAY, individually and on behalf of all others similarly situated	)	Civil Action Docket No. 73-95
v.	)	
R. KENT STONEMAN, individually and as Commissioner of the Department of Corrections of the State of Vermont; MICHAEL MOEYKENS, individually and as acting Warden of the Vermont State Prison at Windsor, Vermont	)	MOTION TO MAINTAIN CLASS ACTION

Plaintiffs in the above entitled proceeding, through undersigned counsel, move this Court for an order that this action be maintained as a class action under Rule 23(c)(1) of the Federal Rules of Civil Procedure, on behalf of a class comprised of plaintiff Craig Murray and all other persons similarly situated, namely, all persons who were on the mailing list to receive the Luparar or who had requested that their named be added to the mailing list.

Plaintiffs further move the Court for an order authorizing that notice of the maintenance of this class action be given to the members of the class and that said notice be made by mail to all persons or organizations whose names appear on the mailing list dated January 28, 1973 or whose requests

to receive copies of the Luparar are documented by the plaintiffs.

Dated: June 28, 1974

/s/ Richard S. Kohn

RICHARD S. KOHN
American Civil Liberties
Union of Vermont, Inc.
43 State Street
Montpelier, Vermont 05602

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF VERMONT

THE LUPARAR; JOHN SHUTTLE, EDITOR OF THE LUPARAR; CRAIG MURRAY, individually and on behalf of all others similarly situated	)	Civil Action Docket No. 73-95
v.	)	
R. KENT STONEMAN, individually and as Commissioner of the Department of Corrections of the State of Vermont; MICHAEL MOEYKENS, individually and as acting Warden of the Vermont State Prison at Windsor, Vermont	)	AFFIDAVIT IN SUPPORT OF MOTION TO MAINTAIN CLASS ACTION

RICHARD S. KOHN, being duly sworn, deposes and says:

1. I am staff attorney for the American Civil Liberties Union of Vermont, Inc., attorneys for the plaintiffs in this action. I have been in charge of this matter since its inception. This affidavit is submitted in support of plaintiffs' motion to have the action declared a class action pursuant to Rule 23, Federal Rules of Civil Procedure.

2. This action was commenced in March, 1973 and arose out of the suppression of the January, 1973 issue of the Luparar, an inmate publication of the Vermont State Prison.

3. At the time suit was instituted, Plaintiff Craig Murray was Executive Director of the Vermont Chapter of the American Civil Liberties Union, Inc. Craig Murray subscribed to the

Luparar as an individual. Plaintiff Murray is representative of those persons and organizations who were subscribers to the Luparar and who did not receive the January 1973 edition because distribution was not permitted by the defendants, and, in addition, represents those who would be interested in receiving future issues of the Luparar if publication were resumed.

THE REQUISITES OF A CLASS ACTION

4. The class is so numerous that joinder of all members is impracticable.

The subscription list discloses that there were forty-three individuals, forty-two newspapers and four organizations who subscribed to the Luparar. In addition, ten other individuals and organizations had requested to be included on the mailing list in the months immediately preceeding and following the suppression. This total of approximately one hundred individuals, organizations and newspapers is clearly large enough to justify treatment as a class.

5. Questions of Law and Fact Common to the Class.

Plaintiff Murray's claim is that he has a constitutionally protected right in receiving the information which the inmates wish to transmit through the medium of the Luparar. The questions of law that must be resolved are the same for all members of the class. The fact that both parties have

filed cross-motions for summary judgment indicates that there is no substantial dispute as to any material fact.

6. The Plaintiff's claim is typical of the claims of the class.

(See number 5, above)

7. Plaintiff will fairly and adequately protect the interests of the class.

The operative element is the ability of counsel to present the action. Since the commencement of this action in 1973, depositions have been taken and discovery made. The case is before the court on cross-motions for summary judgment. The legal issues affecting the class members are the same and have been briefed in memoranda of law filed with the court. There is no reason to believe that the issues will not be adequately presented for resolution.

8. The party opposing the class has acted or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole. F.R.Civ.P. 23(b)(2)

The action of the Department of Corrections in suppressing distribution of the January issue of the Luparar outside the prison deprived each of the addresses of his right to receive the information sought to be transmitted by the inmates. Should the court grant the relief requested by the plaintiffs, the benefits of that relief should inure to all the members of the class.

9. The questions of law or fact common to the class predominate over any questions affecting only individual members. F.R.Civ.P. 23(b)(3)

As indicated above, common questions of law and fact are substantial in nature. In order to determine that this is a class action, the court must also find that these common questions predominate over questions affecting only individual members of the class. There are virtually no individual questions aside from the common questions. There are no variations in the effect of the action on the plaintiffs.

10. A class action is superior to other available remedies.

The second discretionary finding required for the court to decide that the action should proceed as a class action of the Rule 23(b)(3) type is that the class action method is superior to other available methods for the fair and effective adjudication of the controversey. Because of the size of the class, an extended discussion of this requirement would be redundant. It would appear self-evident that with approximately 100 subscribers, a class action represents the most practical methods of proceeding.

In view of the foregoing, it is respectfully requested that the motion should be granted in all respects.

Dated: June 28, 1974

/s/ Richard S. Kohn
Richard S. Kohn
Ar[illegible] Civil Liberties
U[illegible]ermont, Inc.
43 St[illegible] Street
Montp[illegible]ier, Vermont 06502

State of Vermont

Washington County, ss.

On June 28, 1974, the above named Richard S. Kohn appeared before me and stated under oath that the statements contained in the foregoing affidavit are true to the best of his knowledge and belief.

/s/ Anne M. Chioldi
Notary Public

CERTIFICATE OF SERVICE

I hereby certify that on June 28, 1974, I served a copy of the foregoing motion to certify a class and accompanying affidavit on the defendant by placing same in the United States mail, first class postage prepaid addressed to Alan Cook, Esq., Ass't. Att. Gen., Dept. of Corrections, State Office Building, Montpelier, Vermont 05602.

/s/ Richard S. Kohn
Richard S. Kohn

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF VERMONT

THE LUPARAR; JOHN SHUTTLE, EDITOR OF LUPARAR; CRAIG MURRAY, individually and on behalf of all others similarly situated,	)	
Plaintiffs,	)	
v.	)	CIVIL ACTION DOCKET NO. 73-95
R. KENT STONEMAN, individually and as Commissioner of the Department of Corrections of the State of Vermont; MICHAEL MOEYKENS, individually and as acting Warden of the Vermont State Prison at Windsor, Vermont,	)	
Defendants.	)	

MEMORANDUM IN OPPOSITION TO CLASS ACTION
AND MOTION TO DROP PARTIES

Defendants Kent Stoneman and Julius Moeykens respectfully urge this court to deny Plaintiffs' motion to maintain a class action. It is Defendants' position that the granting of Plaintiffs' motion would serve only to obfuscate the issues at hand and that, therefore, the case can more appropriately be considered on behalf of the individual Plaintiffs. Defendants also urge that the court grant their motion to drop party plaintiffs as provided by Rule 21 of the Federal Rules of Civil Procedure.

In order to understand Defendants' objections to Plaintiffs' motion, it is useful to consider the identity of the Plaintiffs and their relationship to the underlying controversy. The named party plaintiffs are: "The Luparar", John Shuttle (denominated as the Editor of "The Luparar"), and Craig Murray. "The Luparar", of itself, is no more than the name of a Prison newspaper. It is not a corporation or other association, owns no assets, and otherwise is possessed of no characteristics of a legally cognizable entity. "The Luparar" should therefore be dropped as a party plaintiff pursuant to F.R.C.P. 21.

John Shuttle, in his capacity as Editor of The Luparar issue in question, may be a proper party to challenge Defendants' refusal to continue subsidization of the Prison newspaper after it allegedly violated the guidelines for publication previously established. However, Craig Murray is improperly joined in this action and should be dropped pursuant to F.R.C.P. 21. The controversy herein centers on Defendants' utilization and control of their own financial resources and whether they should be unwilling participants in an arguably defamatory publication which violates the guidelines established for its operation. Plaintiff Craig Murray bears no logical relation to the issue thus framed. He was not a staff

member of The Luparar, had offered no manuscripts for publication, and had no other interest in the publication of The Luparar beside that of learning of alleged activities within Windsor Prison and the thoughts of residents living there.

Mr. Murray's interest in being apprised of these aspects of prison life is in no way jeopardized or infringed by Defendants' actions in refusing to support the newspaper. It continues to be the policy of the Department of Corrections to allow inmate writings to be freely sent to outside newspapers, broadcasting stations, and private individuals (see attached newspaper exhibits). The editors of The Luparar or any other inmates could have privately communicated with Mr. Murray virtually whenever they chose. (See attached policies regarding mail, visiting and telephone use. It is significant to note that Defendants' policies regarding correspondence far exceed the requirements recently published by the Supreme Court in Procunier v. Martinez, 94 S. Ct. 1800 (1974).) In addition, Murray can scrutinize newspapers and other publications for inmate-generated information, or, probably more realistically, can correspond with any inmate or inmates he chooses.

The joinder of Mr. Murray is an attempt to convert a dispute concerning financial support into a First Amendment case. But whatever rights the inmate editors have regarding

continued subsidization Mr. Murray does not have any right to relief (see F.R.C.P. 20(a)). This is clearly not a case where the Plaintiffs' "right to hear" has been jeopardized by blanket restrictions on communication, e.g. The Washington Post Co. v. Kleindienst, (D.C. Cir. 1974) 494 F.2d 994, cert. granted 94 S. Ct. 1482. Murray, no less than any other interested outsider, is afforded opportunities to receive information from the Prison which far exceed, in both content and scope, his receipt of the state-financed Prison newspaper. See Kleindienst v. Mandel, 408 U.S. 753, 765 (1972). His joinder in the present action is thus inappropriate.

Even if the court should hold that Mr. Murray is a proper party it should still deny Plaintiffs' motion for class action status. Defendants fail to see any utility whatsoever in the maintenance of this suit as a class action. If Plaintiff John Shuttle, as Editor of "The Luparar", is successful in reinstating state support for the newspaper, then a fortiori, the rights of all subscribers will be protected, since "The Luparar" will once again be published and sent to its subscribers. The class of subscribers have nothing to add to the determination of this case on its merits and, since any relief will accrue to their benefit anyway, they will be adequately represented by Plaintiff Shuttle. (It is instructive to note that Plaintiff Shuttle's attorney is the same

as that of Plaintiff Murray and of the alleged subscriber class.) Thus, Plaintiffs' motion fails to show that any potential injunctive relief regarding subscribers necessitates a class action denomination (F.R.C.P. 23(b)2). By the same token, Plaintiffs' motion fails to show "that a class action is superior to other available methods for a fair and efficient adjudication of the controversy". (F.R.C.P. 23(b)3).1/

For the foregoing reasons, Plaintiffs' motion to maintain a class action should be denied and Defendants' motion for non-joinder of parties should be granted.

Dated at Montpelier, Washington County, Vermont, this 12th day of July, 1974.

KIMBERLY B. CHENEY
Attorney General
State of Vermont

By:
/s/ Alan W. Cook
ALAN W. COOK
Assistant Attorney General
Department of Corrections
State Office Building
Montpelier, Vermont 05602

1/ Parenthetically, it should be noted that Plaintiffs have made no affirmative showing beyond the statement of their attorney that Craig Murray will adequately represent the other members of the proposed class. Likewise, in view of the numerous vehicles available for communication in and out of the prison, it is likely that all or a high percentage of the members of the proposed class have no interest whatsoever in pursuing this litigation.

VOL. 78 — NO. 70 June 6, 1974

THE TIMES-ARGUS

Inmates Shut In Cells Following 'Bomb' Explosion

By JOHN LESCH

WINDSOR — The entire inmate population at the Vermont State Prison here has been locked up since Tuesday, in an unusual move by prison administrators who say the effort has yielded drugs, cash and other contraband material smuggled behind the walls to prisoners.

Warden Julius Moeykens said today the lock-up and full-scale search of inmates and all prison grounds is expected to be completed by Friday evening.

Three inmates are expected to be charged with possession of a regulated drug, said Moeykens, as a result of the operation.

Five major factors, he said, including the detonation of an explosive device in the prison's maximum security "A" block, led to the decision to seal the prison's 94 inmates into their individual cells.

Normally, prisoners are allowed access at set times to the prison yard for exercise and prison shops, where articles are manufactured.

News of the lockup first surfaced today in a written statement by prisoner Bernard J. Woodmansee, who charged officials had no apparent reason for the lockup. He contended it apparently was being carried out to raise prisoner dissatisfaction, create unrest and lend credence to state officials' claims that a new prison is needed.

State officials are seeking a replacement for the facility, the oldest state prison in continuous use in the United States.

Factors leading to the lockup and shakedown, said Moeykens, accumulated over a period of several weeks.

Administrators were told, he said, that:

— Prisoners had several caches of marijuana, and were smoking it.

— Cash was hidden throughout the prison.

— Clubs and rocks were being stored by prisoners in block areas for future disturbances.

— Reports were circulating that several prisoners were organizing an escape attempt.

— Finally, he said, a "bomb device," apparently made with match heads and a closed container, was detonated last weekend in "A" block, causing no damage but bringing guards to the scene.

"This shakedown I strongly felt was necessary, and the quantity of cash that has been picked up has verified that," he said.

"We have discovered other kinds of evidence — hard evidence — but I don't want to go into details," said the warden.

But, he said, three prisoners' names have been forwarded to Windsor County State's Atty. Michael Sheehan for investigation and possible prosecution on drug charges.

"In order to properly do a major shakedown, you have to immobilize everyone," he said.

Tuesday and Wednesday were spent searching "B" and "C" blocks, said the warden, who added prisoners have been fed in their cells by guards carrying trays.

The prison shops and yard area also are being searched, he said.

(Prison, Page 12)

p. 12; T-A 6/6/74

Prison

(Continued from Page One)

"They are usually too smart to hide things where they live," he said.

He said the lockup is a hardship on prisoners and guards. Inmates, he said, are throwing garbage and left-over food on tiers in front of their cells.

But he maintained the action was necessary because the contraband level is rising.

"They know everybody's behavior and patterns on the staff," he said. "They have 24 hours a day to plan devious behavior."

He said it is not entirely clear how contraband enters the facility, but speculated it could be thrown over the walls, brought in with packages, brought by visitors to the prisoners or returned to the facility by trustees allowed to leave the grounds.

Objecting to the lockup, Woodmansee, wrote:

"It became clear this (Tuesday) morning that the administrator of the prison does not want the prison to run smoothly because, for no apparent reason, he locked up the institution. That is to say: we were not let out of our cells for breakfast today and upon retiring yesterday, all was quiet at the prison.

"We have to assume it is being done in order to strengthen the department position on the need for a new prison which of course is nonsense — or in the alternative — the present administrator has this time crossed the line and is now totally insane.

"We ask the public how long are you going to put up with the present commissioner and superintendent and how many more dollars of your money are you going to allow these two incompetents to waste? How long are you going to be able to blame the inmates and not the real culprits, the administrators?"

ONLY COPY AVAILABLE

Windsor Shakedown, Lock-Up Disclosed

f20 Rutland Daily Herald 6/7/74

WINDSOR -- The discovery of illicit drugs on the premises, rumors of a plotted mass escape, and other rumors of smuggled clubs and rocks led to a massive lock-up and shakedown inspection of the State Prison here during the past three days.

Warden J. V. Moeykens said Thursday there was also the explosion of a small, home-made bomb device that was set in "A" block over the weekend.

Word of the lock-up and shakedown came after an inmate, Bernard Woodmansee of Burlington, wrote a letter to newspapers complaining that the prison administration had no reason for the lock-up and was using it as a means of harassing the inmates.

Moeykens detailed five specific reasons for the shakedown inspection -- during which the inmates are confined to cells -- and noted it had been some time since the institution had a major inspection.

Among the reasons was a rumor that contraband cash was floating around the prison.

Woodmansee is serving a term for parole violation, and when that is done, he will serve a sentence of six to seven years for conviction as an accessory to the murder of Raymond Lestage in Royalton two years ago.

Moeykens said the lock-up and search started Tuesday morning and is continuing on schedule. He noted half of both "B" and "C" blocks were completed Tuesday and then finished Wednesday.

The men in "C" block were allowed to shower Wednesday evening.

The warden stated the men haven't been allowed outside the area of their blocks, however, because the remainder of the prison buildings has yet to be searched.

"I have reason to suspect more cash and drugs are hidden outside in other buildings," he noted, and went on to explain that prisoners try to stash contraband goods in some place other than their cells because they don't like to have it found in their personal possession.

Moeykens said events of the past couple of weeks led to the massive search, and said he would have been shirking his duty if he hadn't ordered the measure.

"We've had rumors of another escape and have been watching those whose names cropped up," he added.

In cases in which illegal has been relayed to Windsor County State's Atty. Michael J. Sheehan for possible court action.

"We found evidence against three inmates," he noted.

The shakedown caused no disruption outside the institution, and no word of it leaked out until Woodmansee wrote his letter. Moeykens said it was merely a "routine" procedure that hadn't been undertaken for some two months, and the combination of rumors and the bomb explosion made it mandatory.

The letter said:

"It became clear Tuesday morning that the administrator of the prison DOES NOT want the prison to run smoothly because for no apparent reason, he locked-up the institution. That is to say, we were not let out of our cells for breakfast, and upon retiring Monday, all was quiet at the prison.

"We have to assume it is being done in order to strengthen the Department (of Corrections) position on the need for a new prison, which of course is nonsense, or in the alternative, the present administrator has this time crossed the line and is now totally insane.

"We ask you the public: How long are you going to put up with the present commissioner and superintendent? How many more dollars of your money are you going to allow these two incompetents to waste? How long are you going to be able to blame the inmates and not the real culprits the administrators?"

ONLY COPY AVAILABLE

POLICY

SUBJECT AREA
960-999 Civil Rights and Opportunities

EFFECTIVE 6/20/74

UNITS AFFECTED
All Correctional Facilities

INTRODUCTION

Open mail practices are essential if residents are to establish and maintain positive supports in the community. In addition the law has recognized the free flow of mail communications between residents and the open community as a fundamental right. The Department accepts and promotes this position within the limits of sound security practices.

OBJECTIVES

To promote the free flow of correspondence to and from residents while at the same time maintaining an acceptable level of security.

GROUP SERVED

All residents and all facilities.

POLICY DESCRIPTION

Under normal circumstances, there should be no restrictions on the number of letters a resident sends out or receives and all residents should be allowed to correspond with persons of their choice. Each facility should provide a reasonable supply of stamps and mail materials to indigent residents.

Under normal circumstances all incoming mail may be opened and inspected only for the purpose of contraband control, and all outgoing mail should be allowed to go out of the facility sealed by the resident.

However, each facility has the right to inspect or read outgoing and incoming mail if it is suspected that the mail contains items, including writings, which constitute a danger to the facility, staff or residents. In this case the mail may be withheld, censored, deleted or other steps taken to prevent its transmission. When mail is opened, it must be done in the presence of the sending or receiving resident. Responsibility for decisions to read mail or open outgoing mail, rests with the facility superintendent, and each incident must be reported to the office of the Commissioner.

Packages will be routinely opened and inspected. The State Correctional Facility - Windsor will keep a log of all mail sent out or received by residents at that facility. Other facilities may keep such a log if the superintendent deems it necessary.

Notwithstanding the other provisions of this policy, all correspondence from a resident to any public official in the State of Vermont or the United States, including attorneys and the courts, shall NOT be inspected, opened or impeded in any way. (See also Policy 446 - Detentioners/"Safekeepers")

Each facility shall develop mail regulations setting out in detail the procedures necessary to implement this policy. Such regulations should be developed where possible with the participation of residents in the facility.

LEGAL REFERENCE

28 VSA, Sec. 802

APPROVED: Kent Stoneman

Kent Stoneman, Commissioner

POLICY

SUBJECT AREA
960-999 Civil Rights and Opportunities

EFFECTIVE 6/20/74

UNITS AFFECTED
All Correctional Facilities

INTRODUCTION

Confinement disrupts a resident's relationship with the community, and the longer the period of confinement, the more serious this disruption becomes. This may result in strained ties with family and friends and increased difficulty in making the eventual transition back to the community.

If a resident is expected to adjust to a free society upon release, the adjustment process must begin long before the day of release. He must be allowed to maintain his ties to the community and his knowledge of what the free community is like if he is to be able to live there satisfactorily upon release.

Therefore, in order to insure that the facility does not isolate the residents from the public and from their families and friends, each facility shall establish visiting practices that are as open as facility resources, program demands, and security will permit.

OBJECTIVE

To establish guidelines within which specific visiting practices can be developed at correctional facilities.

GROUP SERVED

Staff and residents at all correctional facilities.

POLICY DESCRIPTION

Each facility shall establish a visiting program and will designate the days of the week and the hours during which visits will be permitted. Visiting hours may be varied to satisfy the schedules of individual facilities.

The superintendent of each facility should encourage residents to have visits by helping to arrange transportation for visitors whenever possible through public service organizations.

Space shall be made available within each facility to be used by residents and visitors with some degree of privacy. Visiting should be conducted informally and openly, consistent with the facility requirements and the availability of space in each facility.

Each facility shall adopt rules of conduct for the visiting room. A visiting room officer should be present during all visiting hours, and it will be his responsibility to maintain order and security and to enforce the rules of conduct. He should supervise the visiting area in an unobtrusive manner, and should not otherwise interfere with participants' privacy. Any behavior on the part of a resident or visitor which is disruptive to the order and control of the visiting room shall result in termination of the visit. There should be no limits on the number of visits or visitors a resident may receive except that reasonable limits, consistent with security and space availability, may be placed on the number of visitors a resident may have at one time and on the length of visits.

Visitors

No groups of persons, such as parolees of ex-offenders, may be excluded from visiting residents solely because of their status.

Visitors will be refused admission when apparently under the influence of alcohol or narcotic drugs.

Each visitor shall, upon entry, register his name, address and relationship to the resident. Visitors may be requested to submit to a search and/or to a review by an electronic device in search of contraband as a protection to the visitor, the residents and others in the facility. (See also Policy 1012 - Contraband).

Entrance may be prohibited if the visitor is not willing to submit to a search or if there is reason to believe that the visit could be a threat to the welfare or security of the facility, its personnel or the residents.

When a visitor is refused entrance, the person to be visited should be advised of this fact and given the reasons for the refusal.

Visits by clergy, corrections employees and other individuals in official positions may be permitted at times other than normal visiting hours subject to facility requirements for security, staff availability, etc.

Attorneys

It is recognized that residents have a right to consult with an attorney, and every effort should be made to allow attorney visits at all reasonable times. The resident has the right to private consultation, but does not have a right to absolute privacy. Such visits may also be governed by reasonable regulations, such as interruption for fixed meal times, so long as any restrictions do not work a hardship on the resident or attorney (e.g., where the attorney travels great distances and will be unable to return for some time). (See also Policy 446 - Detentioners/"Safekeepers").

General Provisions

The superintendent shall have complete discretionary authority to allow emergency visits.

Limits may be placed on the visiting program of a resident in a special classification status.

Each facility shall adopt visiting regulations consistent with this policy and make them available to all residents and visitors.

LEGAL REFERENCES

28 VSA Sec. 102(c)

28 VSA Sec. Sec. 601 (7)

28 VSA Sec. 804

28 VSA Sec. 805

APPROVED: Kent Stoneman

Kent Stoneman, Commissioner

TELEPHONE USE

Two phone calls per month are permitted to each resident of "C" Block, and four phone calls per month are permitted to residents of "B" Block.

An additional call per month may be permitted for sufficient reasons, such as sickness in the family or attorney consultation; these will be considered on an individual basis. All calls must be placed through the Facility Control Center, and all toll calls must be on a collect basis. Once the Control Center has reached your party, you will be permitted the privacy of conversation. Incoming calls requesting to speak with individual residents will be normally rejected.

You should request your calls through the day shift supervisor.

It is recognized that detentioners, by definition, may require special considerations for communication with the community that is specifically relevant to their detention status.

In view of this, additional phone calls for detentioners may be permitted, with the permission of shift supervisor if the normal regulations outlined above are not sufficient to meet the special needs of detentioners.

All residents should remember that this privilege will be subject to specific limitations if warranted by security. Records detailing date, time, receipt, and relationship to the resident will be kept by the Facility.

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF VERMONT

THE LUPARAR; JOHN SHUTTLE, EDITOR OF LUPARAR; CRAIG MURRAY, individually and on behalf of all others similarly situated,	)	
Plaintiffs,	)	
v.	)	
R. KENT STONEMAN, individually and as Commissioner of the Department of Corrections of the State of Vermont; MICHAEL MOEYKENS, individually and as acting Warden of the Vermont State Prison at Windsor, Vermont,	)	CIVIL ACTION DOCKET NO. 73-95
Defendants.	)	

MEMORANDUM OF LAW IN SUPPORT OF
MOTION TO DROP PARTIES

Rule 20(a), Federal Rules of Civil Procedure, details the criteria which must be met before persons may be joined in an action as party Plaintiffs. Rule 21, Federal Rules of Civil Procedure, provides that parties, if misjoined, can be dropped from an action upon motion of any party or on the court's own initiative.

Such action by the court in dropping parties pursuant to F.R.C.P. 21 finds ample support in the case law. See, for example, Goodman v. H. Hentz & Co., (D.C. Ill. 1967) 265 F. Supp. 440; U.S. v. Commercial Bank of North America, (D.C.N.Y.

1962) 31 F.R.D. 133; Canadian Hellenic Enterprises, Ltd. v. Berkwit, (D.C. N.Y. 1958) 1969 F. Supp. 660.

Dated at Montpelier, Washington County, Vermont, this 12th day of July, 1974.

KIMBERLY B. CHENEY
Attorney General
Department of Corrections

By:
/s/ Alan W. Cook
ALAN W. COOK
Assistant Attorney General
Department of Corrections
State Office Building
Montpelier, Vermont 05602
Tel. (802) 828-2452

CERTIFICATE OF SERVICE

This is to certify that on the 12th day of July, 1974, I served a copy of the above Defendants' Memorandum in Opposition to Class Action and Motion to Dismiss Parties and Memorandum of Law in Support of Motion to Drop parties with a copy of this Certificate appended thereto, on the plaintiffs in this matter, by mailing a true conformed copy thereof in a sealed envelope, first-class postage prepaid to Richard S. Kohn, Esq., American Civil Liberties Union, Inc. 43 State Street, Montpelier, Vermont 05602.

/s/ Alan W. Cook
ALAN W. COOK
Assistant Attorney General
Department of Corrections

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF VERMONT

The Luparar; John Shuttle, Editor of Luparar; Craig Murray, individually and on behalf of all others similarly situated	:	
v.	:	Civil Action
R. Kent Stoneman, individually and as Commissioner of the Department of Corrections of the State of Vermont; Julius Moeykens, individually and as acting Warden of the Vermont State Prison at Windsor, Vermont	:	File No. 73-95

Richard S. Kohn, Esq., American Civil Liberties Union of Vermont, Inc., Montpelier, Vermont, for plaintiff.

Alan W. Cook, Esq., Assistant Attorney General, Montpelier, Vermont, for defendants.

COFFRIN, District Judge.

This case presents serious questions concerning the right of prisoners to publish a prison newspaper and the right of the state if such a paper is published to impose guidelines on the types of articles that may be published, to suppress distribution of an issue, and to terminate the publication if it so desires.

The case is grounded upon 42 U.S.C. § 1983 and its

jurisdictional complement, 28 U.S.C. § 1343. Plaintiffs seek injunctive and declaratory relief to permit the distribution of the January, 1973, issue of The Luparar and its continued publication without interference or censorship by the state. The case is before us on cross motions for summary judgment, defendants having moved to dismiss the complaint, or in the alternative, for summary judgment.

The Luparar was a newspaper published monthly by the inmates at the Vermont State Prison starting in December, 1971. At the outset, guidelines for publication were established at a meeting between a group of prisoners and some of the administrative staff. The paper was supported by the state and printed on the offset printing press at the State Prison. In the fall of 1972 there was a change of editors, and defendants allege that the editorial policy of the paper changed radically at this time. They claim that the publication began to carry attacks on personalities in violation of the guidelines that specified, inter alia, that issues, not personalities, would be discussed.

In January, 1973, the prison administration notified the newspaper staff that the issue could not be distributed as printed because some of the articles were objectionable. The staff made two attempts to mail copies of The Luparar to

addresses outside the prison, but the prison mailman refused to accept them for mailing. The prison administration also sought to suppress distribution of the newspaper within the prison, but succeeded in recovering only a few of the five hundred copies printed. Since January, 1973, no issues of The Luparar have been published because the staff of the paper refuses to adhere to the 1971 guidelines or to discuss new guidelines, while the state will not allow publication without guidelines.

Plaintiffs are The Luparar, John Shuttle, an inmate who is the editor of the newspaper, and Craig Murray, an outside subscriber to the newspaper, who also purports to represent all others similarly situated. Defendants are R. Kent Stoneman, Commissioner of the Department of Corrections of the State of Vermont, and Julius Moeykens, incorrectly styled Michael Moeykens in the complaint, who, at the time suit was brought, was Acting Warden of the Vermont State Prison. Defendants are sued both individually and in their official capacities.

Defendants have moved under Fed. R. Civ. P. 21 to drop The Luparar and Craig Murray as parties plaintiff. Plaintiffs have no objection to The Luparar being dropped and it may be so dropped. Plaintiffs object to dropping of Craig Murray as a party plaintiff, alleging that his right to receive the

newspaper was infringed by defendants. Defendants claim that the interests of Craig Murray and the class he represents will be fully considered by the very nature of the suit and thus oppose granting the plaintiffs' motion to maintain the suit as a class action under Fed. R. Civ. P. 23(c).

We believe that maintaining this suit as a class action is unnecessary since, as should be apparent from this opinion, the relief applicable to plaintiff Murray would be applicable to the entire class of subscribers. We therefore deny plaintiffs' motion to maintain the suit as a class action and deny defendants' motion to drop Craig Murray as a party plaintiff.

Defendants' motion to dismiss the complaint for failure to state a cause of action is denied. In an action brought under the Civil Rights Act, the case should not be dismissed for failure to state a claim upon which relief can be granted under Fed R. Civ. P. 12(b)(6) unless it appears to a certainty that the plaintiffs would be entitled to no relief under any state of facts which could be proved in support of their claims. Blair v. Rockefeller, 469 F.2d 641, 642 (2d Cir. 1972); Holmes v. New York City Housing Authority, 398 F.2d 262, 265 (2d Cir. 1968). Applying this test, we cannot say that plaintiffs could prove no set of facts which would entitle them to relief, and so we proceed to consider the

cross motions for summary judgment.

It is well established that the internal management of prisons or correctional institutions is vested in and rests with the heads of those institutions operating under statutory authority, and their acts and administration of prison discipline and overall operation of the institution are not subject to court supervision or control. However, in the case of highly unusual circumstances or a violation of constitutional rights, courts have the power and duty to intervene in the internal affairs of a prison. See Johnson v. Avery, 393 U.S. 483 (1969); Sostre v. McGinnis, 442 F.2d 178 (2d Cir. 1971), cert. denied, 404 U.S. 1049 (1972); Douglas v. Sigler, 386 F.2d 684 (8th Cir. 1967).

Although plaintiffs and defendants are unable to agree on what precise issues are to be determined, the Court finds the following four issues in this suit. As we see it, the first issue that must be determined is what, if any, first amendment protections apply to the publication of a newspaper by prison inmates and the distribution of the newspaper within and without the prison. The second is whether the state, having permitted an inmate newspaper to be published by state facilities and to be partially supported by state funds, can terminate the publication because it objects to its content. The

third issue is whether the state can impose guidelines on the publication. The final issue is whether the state can impose prior restraints upon publication of an issue because it objects to the content.

I

The first issue to be determined is whether the publication of a prison newspaper and distribution both inside and outside the prison is protected by the first amendment. Convicted prisoners do not retain "the full panoply of constitutional rights which citizens normally enjoy. But among the basic rights which they do retain in prison are certain of the first amendment freedoms and the sixth and fourteenth amendment right of access to the courts." Goodwin v. Oswald, 462 F.2d 1237, 1241 (2d Cir. 1972). Although the Supreme Court in Procunier v. Martinez, 42 U.S.L.W. 4606 (U.S. April 29, 1974), expressly withheld its opinion with regard to mass mailings by prisoners, 42 U.S.L.W. at 4610 n.11, we feel that the principles applicable to censorship of prisoner mail apply equally to censorship of a prisoner newspaper. The Court in Procunier refused to reach the question whether prisoners retained first amendment rights to send and receive uncensored mail. Instead, it based its decision on the first amendment rights of outsiders to carry on an uncensored correspondence with prison inmates.

The issue here with respect to subscribers to The Luparar such as plaintiff Murray is virtually the same as that in Procunier, and we hold that distribution of a prison newspaper to subscribers outside the prison may not be prevented by prison officials unless such distribution would be likely to interfere with the legitimate governmental interests of security, order, and rehabilitation discussed in Procunier v. Martinez. 42 U.S.L.W. at 4612. Any suppression of a newspaper for reasons other than those would violate the outside subscribers' first amendment rights to receive the newspaper.

As for distribution within the prison, we fail to see how a newspaper that does not threaten security, order and rehabilitation can be withheld from the inmates. However, as the Supreme Court noted in Tinker v. Des Moines Independent Community School District, 393 U.S. 503, 506 (1969), first amendment guarantees must be "applied in light of the special characteristics of the . . .environment." It follows, we think, that the same standards that determine whether distribution outside the prison would threaten legitimate governmental interests would apply to distribution within the prison. See Procunier v. Martinez, 42 U.S.L.W. at 4611-12. We hold, therefore, that distribution of a prison newspaper within the prison is entitled to the same protections and subject to the same limitations as distribution outside

of the prison.

II

We next take up the issue of the state's termination of the publication because of objections to its content. Although cases dealing with prison newspapers are scarce, we find close analogies in the issues raised in cases concerning school and college newspapers. In Joyner v. Whiting, 477 F.2d 456 (4th Cir. 1973), the court said:

> It may well be that a college need not establish a campus newspaper, or, if a paper has been established, the college may permanently discontinue publication for reasons wholly unrelated to the First Amendment. But if a college has a student newspaper, its publication cannot be suppressed because college officials dislike its editorial comment. . . .This rule is but a simple extension of the precept that freedom of expression may not be infringed by denying a privilege. Id. at 460 (citations omitted).

In Antonelli v. Hammond, 308 F. Supp. 1329, 1337 (D. Mass. 1970), the court stated, "Having fostered a campus newspaper, the state may not impose arbitrary restrictions on the matter to be communicated." We find this principle as applicable to the prison as it is to the campus. The state is not required to establish or support an inmate newspaper, and once it does so, it can withdraw its approval or support for any reason, except those impermissible under the first amendment. However, once the state has allowed a newspaper to be established, the objection of prison officials, or those in

the Department of Corrections, to its editorial content is not a permissible reason under the first amendment to prohibit its distribution.

Nor does the state's financial support of the newspaper compel a different conclusion. In Antonelli v. Hammond, supra, the court held that the payment of the newspaper's expenses by the college from funds received from compulsory student activity fees did not justify the censorship by the administration, saying:

> We are well beyond the belief that any manner of state regulation is permissible simply because it involves an activity which is part of the university structure and is financed with funds controlled by the administration. 308 F. Supp. at 1337.

In Joyner v. Whiting, supra, the court said:

> Censorship of constitutionally protected expression cannot be imposed by suspending the editors, suppressing circulation, requiring imprimatur of controversial articles, excising repugnant material, withdrawing financial support, or asserting any other form of censorial oversight based on the institution's power of the purse. 477 F.2d at 460 (footnotes omitted).

At the commencement of the publication of The Luparar, the cost of publishing the newspaper was expected to be approximately $30.00 per issue which initially was to come from the inmate's fund and later was to be defrayed, in whole or in part, by subscriptions and contributions.[1] We agree

with the reasoning of Joyner, supra, and Antonelli, supra, and hold that once the state has sanctioned publication of the newspaper, it cannot terminate publication even when financially supported by the state, or suppress circulation in a manner inconsistent with the freedom of expression guaranteed by the first amendment.

The next question we must decide is whether the publication of The Luparar was terminated in a permissible manner under the circumstances. The test we apply is that adopted by Procunier v. Martinez, 42 U.S.L.W. 4606 (U.S. April 29, 1974). The Court held that censorship of incoming and outgoing prisoner mail is only permissible when it furthers one or more of the substantial governmental interests of security, order and rehabilitation. 42 U.S.L.W. at 4612. The Court upheld the decision of the district court invalidating regulations that "authorized, inter alia, censorship of statements that 'unduly complain' or 'magnify grievances,' expression of 'inflammatory political, racial, or religious, or other views,' and matter deemed 'defamatory' or 'otherwise inappropriate.'" Id. The Court went on to criticize the actions of prison officials who, under the broad regulations, suppressed unwelcome criticism. Such broad restrictions, the Court held, were not necessary to further a governmental interest unrelated to

the suppression of expression and thus were not permissible. Id.

The central points of the state's objections to certain articles in The Luparar are that the articles are inflammatory,[2] that they attack personalities, not issues, in violation of the November, 1971, guidelines,[3] and that circulation of the articles outside the prison might subject the state to defamation suits.[4] The Court has examined the articles in question, and while it does not in any way approve of their tone and content, it does not find that they threaten the governmental interests of security, order, and rehabilitation, either individually or collectively. The basis for the objections of the state to such articles are similar to the basis for the mail censorship struck down by the Supreme Court in Procunier v. Martinez, supra. The fact that an article is critical, attacks personalities, or is even defamatory, is not a sufficient reason standing alone to suppress the publication in which it appears. If the state is concerned about the possibility of libel suits being brought against it, it could require a disclaimer to be printed in the paper, as was done in Bazaar v. Fortune, 489 F.2d 225 (5th Cir. 1973), aff'g en banc with modification, 476 F.2d 570 (5th Cir.), cert. denied, 42 U.S.L.W. 3632 (U.S. May 13, 1974).

III

We do not mean to say, however, that a prison newspaper must be entirely free from regulation. In Joyner v. Whiting, supra, the court followed the holding of Tinker v. Des Moines Independent Community School District, 393 U.S. 503 (1969), and did not rule out all prior restraint, by appropriate regulations, upon publications distributed during school hours on school premises where they can reasonably forecast substantial disruption or material interference with school activities on account of the distribution of such printed material. 477 F.2d at 461. In Eisner v. Stamford Board of Education, 440 F.2d 803 (2d Cir. 1971), the Second Circuit, per Judge Kaufman, noted that any restrictions on distribution or publication of printed or written material would be more serious on a college campus than at a high school because students presumably would spend more time on campus. Id. at 808 n.5. A fortiori, restrictions would weigh even more heavily in a prison.

This court recognizes that free speech does not mean wholly unrestricted speech and the constitutional rights of prisoners may be modified by regulation reasonably designed to adjust those rights to the needs of the prison environment. See Tinker v. Des Moines Independent Community School District, 393 U.S. 503, 506 (1969); Antonelli v. Hammond, 308 F. Supp.

1329, 1336 (D. Mass. 1970). However, any infringement of individual constitutional freedoms must be adequately related to legitimate governmental interests. In Procunier v. Martinez, 42 U.S.L.W. 4606, supra, the Supreme Court recognized only three legitimate governmental interests justifying censorship of prisoners' mail: prison security, prison order and prisoner rehabilitation. Id. at 4612. The Court cautioned that "the limitation of First Amendment freedoms must be no greater than is necessary or essential to the protection of the particular governmental interest involved. Thus a restriction . . .that furthers an important or substantial interest of penal administration will nevertheless be invalid if its sweep is unnecessarily broad." Id.

We hold that prison officials may unilaterally enact regulations pertaining to publication of a newspaper by prison inmates, but such regulations must be no broader than is necessary to protect the legitimate governmental interests of prison security, prison order and prisoner rehabilitation.

IV

The final issue with which we are faced is whether the state can exercise prior restraint on the publication of a prison newspaper because it objects to its content. As indicated above, the prison authorities cannot suppress the prison

newspaper because of its content unless that content threatens the legitimate governmental interests discussed by the Supreme Court in Procunier v. Martinez, supra. The articles objected to by the prison officials in the January, 1973, issue of The Luparar do not rise to the level of threatening those governmental interests. We hold that the prison officials may not continue to suppress or prevent distribution of the January, 1973, issue of The Luparar, either inside or outside of the prison.

A further issue will arise in light of what we have said earlier if The Luparar, or another prison newspaper, is published in the future. While the prison officials may establish guidelines or regulations concerning the content of the newspaper, there must be procedural safeguards if a newspaper, or parts of it, are found to be in violation of guidelines or regulations. The interest of prisoners and outside subscribers in an uncensored newspaper, based as it is in the first amendment, is clearly a "liberty" interest within the meaning of the fourteenth amendment, even though limited because the newspaper in question is published in prison and therefore may be proscribed from publishing certain items. Nevertheless, such an interest is protected from arbitrary governmental invasion. See Procunier v. Martinez, 42 U.S.L.W. 4606, 4613.

See also Board of Regents v. Roth, 408 U.S. 564 (1972); Perry v. Sindermann, 408 U.S. 593 (1972). We think that a procedure for pre-publication submission by the editors of material to be published for prison administrative approval before distribution is permissible under certain conditions. Eisner v. Stamford Board of Education, 440 F.2d 803, 810 (2d Cir. 1971). See Freedman v. Maryland, 380 U.S. 51 (1965). In Freedman, the Court held that in order to obviate the dangers of a censorship system, the state must assume the burden of proving a film is obscene, secure a judicial determination of a film's obscenity before it may impose a final valid restraint, and reach a final decision whether to restrain the showing of a film within a specified brief time.

We think these requirements are adaptable to the situation here. We do not believe a court determination is necessary before prison officials can act to suppress material submitted to them, since it would cause long delays in publication. However, the prison authorities have the burden of demonstrating a permissible basis for interference with prisoner publications. Courts will not be content with the officials' bare allegation that such a basis existed. We believe that if this burden is met by the prison authorities it will satisfy the intent of Freedman when applied to the prison context. See Eisner,

supra, at 810. The prison administration must also ensure an expeditious review procedure. To be valid, the regulations must proscribe a definite brief time within which the review of submitted material will be completed. See id. In addition, the editorial staff of the prison newspaper must be notified of the rejection of material submitted by it, the reasons for the rejection, and must be given a reasonable opportunity to protest that decision. Complaints about the decision must be referred to a prison official who did not take part in the original determination of suitability for publication. See Procunier v. Martinez, supra, at 4613. These requirements do not appear to be too burdensome to either plaintiffs or defendants and we believe that clear regulations can establish a procedure that can deal fairly with both the first amendment interests involved and the legitimate interests of the prison officials.

WHEREFORE, defendants or their successors are hereby ORDERED:

To cease suppression of the January, 1973, issue of The Luparar, to return the copies of that issue that they seized to the editor and staff of The Luparar, to permit that issue to be mailed to subscribers outside the prison, to promulgate regulations dealing with the publication of the newspaper if there is continued interest in publishing it, and to provide

a review procedure in those regulations in accordance with that described earlier in this opinion.

Dated at Burlington in the District of Vermont, this 30th day of September, 1974.

/s/ Albert W. Coffrin
District Judge

FOOTNOTES

1/ Annex A to Affidavit of Robert G. Smith.

2/ Deposition of R. Kent Stoneman at 24, 46.

3/ Deposition of Julius V. Moeykens at 40-45, deposition of R. Kent Stoneman at 19-28.

4/ Deposition of R. Kent Stoneman at 14-15, 33-34.

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF VERMONT

THE LUPARAR; JOHN SHUTTLE, EDITOR OF LUPARAR; CRAIG MURRAY, individually and on behalf of all others similarly situated,	)	
Plaintiffs,	)	
v.	)	Civil Action File No. 73-95
R. KENT STONEMAN, individually and as Commissioner of the Department of Corrections of the State of Vermont; MICHAEL MOEYKENS, individually and as acting Warden of the Vermont State Prison at Windsor, Vermont,	)	
Defendants.	)	

MOTION ALTERNATIVELY FOR NEW TRIAL,
REHEARING OR REARGUMENT OF
MOTION FOR SUMMARY JUDGMENT

Now come the Defendants and move this Court for new trial, rehearing or reargument on the granting of summary judgment dated September 30, 1974, against them because, with all due respect, Defendants believe the Court has committed manifest errors of fact and law which are more fully explained in the Memorandum in support of this motion.

MOTION FOR STAY OF ORDER

Defendants move this Court for an immediate stay of its Order dated September 30, 1974, pending reconsideration of same as requested above. In the event such reconsideration

is denied or if upon reconsideration of the Order of September 30, 1974, the Court elects not to modify same, then Defendants request a stay pending appeal. Specific reasons for a stay and authority in support thereof are contained in the Memorandum in support of this motion.

REQUEST FOR ORAL ARGUMENT

Defendants request an opportunity to orally argue the above captioned motions and to introduce relevant evidence in support thereof.

Dated at Montpelier, Vermont, this 9th day of October, 1974.

Respectfully submitted,

KIMBERLY B. CHENEY
Attorney General
State of Vermont

By:
/s/ Alan W. Cook
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UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF VERMONT

THE LUPARAR; JOHN SHUTTLE, EDITOR OF LUPARAR; CRAIG MURRAY, individually and on behalf of all others similarly situated,	)	
Plaintiffs,	)	
v.	)	Civil Action File No. 73-95
R. KENT STONEMAN, individually and as Commissioner of the Department of Corrections of the State of Vermont; MICHAEL MOEYKENS, individually and as acting Warden of the Vermont State Prison at Windsor, Vermont,	)	
Defendants.	)	

MEMORANDUM IN SUPPORT OF
MOTION FOR RECONSIDERATION OF
SUMMARY JUDGMENT AND MOTION FOR STAY

I

THE COURT HAS COMMITTED MANIFEST ERRORS OF LAW AND FACT IN ITS ORDER DATED SEPTEMBER 30, 1974, WHICH REQUIRE IN THE INTEREST OF JUSTICE ALTERNATIVELY THAT THE COURT GRANT A NEW TRIAL, A REHEARING OR RECONSIDER ITS SUMMARY JUDGMENT.

With all due respect, Defendants believe that the Court has committed manifest errors of law and fact which, in the interest of justice, require the Court to reconsider its Order, to wit:

1. The Court has mistakenly relied upon the so-called "school newspaper" cases in its summary judgment and erron-

eously concluded that a prison newspaper is legally equivalent to a school or college newspaper.

In its Opinion the Court has equated a prison newspaper to a college campus newspaper with regard to the permissibility of regulation of editorial content. Opinion, p. 7. The Court quoted Antonelli v. Hammond, 308 F. Supp. 1329, 1337 (D. Mass. 1970) which said, "Having fostered a campus newspaper, the state may not impose arbitrary restrictions on the matter to be communicated." In the next sentence this Court said, "We find this principle as applicable to the prison as it is to the campus." Opinion, p. 7. Implicit in this is the assumption that the Vermont State Prison is similar to a college campus and that an inmate publication is for purposes of the Constitution the legal equivalent of a college newspaper. This is clearly not so. Mr. Justice White on June 26, 1974, in Wolff v. McDonnell, 15 Cr.L.Rptr. 3304 when discussing good reasons for limiting due process in prison disciplinary matters painted a true portrait of life in prison which Defendants maintain bears little resemblance to a college campus. He described it as:

> a
> ". . ./closed, tightly controlled environment peopled by those who have chosen to violate the criminal law and who have been lawfully incarcerated for doing so. Some are first offenders, but many are recidivists who have repeatedly employed illegal and

> often very violent means to attain their ends. They may have little regard for the safety of others or their property or for the rules designed to provide an orderly and reasonably safe prison life. Although there are very many varieties of prisons with different degrees of security, we must realize that in many of them the inmates are closely supervised and their activities controlled around the clock. Guards and inmates coexist in direct and intimate contact. Tension between them is unremitting. Frustration, resentment and dispair are commonplace." Id. at 3311.

He went on to say:

> "It is against this background that we must make our constitutional judgments, realizing that we are dealing with the maximum security institution as well as those where security considerations are not so paramount. Id. at 3311.

Indeed, editorial control of a prison newspaper like prison discipline might well be a desirable feature in promoting the legitimate "correctional goal of modifying behavior and value systems of prison inmates sufficiently to permit them to live within the law when they are released". Id. at 331.

The prison is an atmosphere where retaliation is much more than a theoretical possibility. Id. at 3311. Defendants can conceive of no better vehicle to "trigger deep emotions" and promote violence than an unregulated prison newspaper. A prison is not a college campus, and given the specially charged environment of a prison, the effects on that environment and prisoner and guard safety of a state funded, unregulated prison newspaper are far-reaching and dangerous. See for example Affidavit of Kent Stoneman, annexed hereto.

In sum, equating the environment of a prison with a college is error.

2. The Court erroneously adopted the standards of Procunier v. Martinez, 42 U.S.L.W. 4606, 15 Cr.L.Rptr. 3009 (U.S. April 29, 1974), a case dealing with censorship of personal prisoner mail as the test which the state must meet in regulating the content of a mass mailed, state supported prison newspaper in a prison which already allows unrestricted and uncensored personal mail.

The court in Procunier dealt specifically with personal prisoner mail and excluded mass mailings from its decision because different considerations apply. Id. at 42 U.S.L.W. at 4610, n. 11 or 15 Cr.L.Rptr. 3013, n. 11. Although this point was noted in this Court's Opinion (Opinion, p. 5), Defendants can only conclude that the Court somehow mistakenly believed that The Luparar was not a "mass mailing". As the record clearly indicates, however, The Luparar was a large scale publication with 500 copies, and it was mailed or to be mailed. Deposition of Julius V. Moeykens, pp. 12, 15. If on the other hand this Court did understand The Luparar to be a mass mailing and deemed it prudent to resolve this case by weighing those "different considerations", then the Opinion of September 30 should have contained such an evaluation. It did not.

Furthermore, the Court's observation on page 6 of the Opinion that "First Amendment guarantees must be 'applied in light of the special characteristics of the . . .environment'" would seem to require a consideration of the special atmosphere of a prison discussed earlier by Mr. Justice White. Opinion, p. 6 and cases cited therein; Wolff. v. McDonnell, supra at 15 Cr.L.Rptr. 3311. Instead the Court said citing Procunier that, "It follows, we think, that the same standards that determine whether distribution outside the prison would threaten legitimate governmental interests would apply to distribution within the prison." Opinion, p. 6. This may be true of personal mail, but not mass mailings.

3. The relief ordered by the Court is erroneous and incomplete.

This is true because the standards enunciated by the Court relative to a) when a prospective issue of The Luparar or parts thereof may be censored or suppressed; b) when state support for The Luparar or a substitute newspaper can be withdrawn and c) when a newspaper may be prevented from commencing operations lack the specificity necessary for reasonable implementation. The result is that Defendants must continually act at their peril with the threat of being in contempt of this Court and further will be subjected to continuing law-

suits involving disputes over the interpretation of either the Court's Order relative to starting or stopping newspapers or the factual basis for any decision to suppress a prospective issue.

Indeed the standards problem is illustrated by an immediate situation. On the date on which Defendant Stoneman received a copy of the Decision in this case, he learned for the first time that with the change in administration, and with no apparent knowledge of this lawsuit, the new warden had indicated some willingness to certain inmates to allow a new inmate newspaper with oral guidelines similar to those litigated in The Luparar case. There was apparently some willingness by the inmates to comply. This was all without the knowledge and authority of the Defendant Stoneman. Obviously, any action now by the Department (although the content of the proposed paper is unknown) to end support for or deny permission to publish a state funded newspaper would be viewed as an attempt to censor by Plaintiffs regardless of the legitimate motives involved. See Affidavit of Stoneman. That this is true is illustrated by the fact that counsel for Defendants was informed by counsel for Plaintiffs on October 8, 1974, a mere eight days after the court's decision on a case that had been pending for better than a year and one half,

Plaintiffs now anticipate filing an action forthwith to hold Defendant Stoneman in contempt of this Court. Defendants fear that this is just the beginning of continued litigation over this matter and that any administrative determination adverse to those who wish to publish a given article, even if the review procedure described in pages 12 and 13 is followed exactly and in good faith, it will result in a lawsuit. The state is thus doomed indefinitely to continuous and expensive litigation unless it totally abdicates even its responsibility to suppress articles which do in fact pose the danger to order, security and rehabilitation. In each case, Defendants would be further handicapped by the fact that this Court has given no guidelines on whether the danger involved must be singular, immediate and pressing, or may be indirect and considered in connection with other relevant factors or dangers. Finally, the disclaimer suggested on pages 9 and 10 of the Opinion as the means to avoid liability after the state has been "compelled to sponsor the writing of another" is not without problems. Bazaar v. Fortune Society, 489 F.2d 225, 226. It is also interesting to speculate where the Defendants may find themselves legally if they as state employees knowingly supply the publishing means for Plaintiffs to commit violations of State law (e.g. obscenity laws) which violations do

not pose an immediate threat to "security, order and rehabilitation" in the prison. In any event, the law of disclaimer is far from settled and there is good cause to believe that an "ineffective tongue in cheek" disclaimer of material known or suspected to be libelous would be of little value to the state in defending a lawsuit on the defamation. See for example, 50 Am Jur 2d Libel and Slander 345 and Kelly v. Loew's Inc. (D.C. Mass.) 76 F. Supp. 473. Defendants could be forced to undergo the expense of numerous lawsuits while they attempt to establish that the disclaimer should be effective to insulate them from liability because they are relatively powerless to control the content of the publication. See for example a similar situation presented in Farmers Educational and Co-Op Union v. WDAY, Inc., 360 U.S. 525, 3 L.Ed.2d 1407, 79 S. Ct. 1302. It is obvious that such a prognosis of continued administrative and legal expense would act to encourage correctional administrators in Vermont and elsewhere to simply refuse to suppress no matter what the danger.

In sum, the relief, ordered by the Court is unworkable and incomplete, and the disclaimer suggested is no guarantee of immunity from liability.

4. The court lacked a factual basis to grant summary judgment against Defendants and found no specific facts to support its decision.

After enunciating standards against which to test this and any prospective issue of The Luparar in terms of restricting distribution, the Court then examined and evaluated the issue in question and concluded that it did not endanger society, order or rehabilitation. Opinion, p. 9. Defendants maintain that such a conclusion cannot be reached merely by examining the writing in question. Rather, given the test the Court has now formulated, it must consider evidence of the actual situation relative to security, order and rehabilitation in the prison at the time in question in evaluating the threat justifying suppression. As this Court said, "First Amendment guarantees must be 'applied in light of the special characteristics of the environment'". Opinion, p. 6. Yet, the Court has failed to make any finding of what the environment was at the prison at the time and then whether under the circumstances and given the atmosphere then present the issue in question threatened security, order and rehabilitation. There are no facts whatever found relative to the actual state of security, order and rehabilitation at the prison and the relative threat The Luparar would work on those facts.

5. The Court in its decision enunciated a new standards governing the regulation of prison newspapers (i.e. threat to security, order and rehabilitation), yet failed to afford Defen-

dants any opportunity whatever to prove facts sufficient to satisfy the Court that it met this new test.

Of necessity, the Court must have erroneously assumed that Defendants could prove no facts or circumstances under which the utterances in question would prove a threat to security. This would seem inconsistent with the spirity of the decision, and Defendants should have been afforded such an opportunity.

6. The national impact and effect of this far-reaching decision on other Departments of Corrections in other states and Vermont state employees is such that the Court should have required a detailed factual basis for its determination developed at a trial and permitted the parties to introduce expert testimony and submits briefs of Amicus Curiae from interested parties.

Defendants request that in the context of a rehearing or reconsideration of this decision they be permitted to do that.

II

DEFENDANTS SHOULD BE GRANTED AN IMMEDIATE AND INDEFINITE STAY OF THIS COURT'S ORDER PENDING RECONSIDERATION OF SUMMARY JUDGMENT AND/OR APPEAL.

Defendants have requested reconsideration of the Order dated September 30, 1974. An immediate stay should be granted to preserve the status quo pending reconsideration. If upon reconsideration this Court elects not to modify its Order,

then an indefinite stay should be granted pending appeal. Such a stay may be reviewed by an appellate court. McSurely v. McClellan, 426 F.2d 664 (1970). A stay preserving the status quo is appropriate for the following reasons:

1. This case was pending before the Court since April 1973. No chilling effects on First Amendment rights could be caused by further delay. Plaintiffs will not be substantially harmed.

2. The issues of law decided in this case involve serious legal questions about which the authorities are in disagreement, and it is in the public interest to have the law settled before any relief issues.

3. Any attempt in good faith by Defendants to apply and construe this decision will result in immediate turmoil.

4. The legal issues involved are of national import, and it is highly probable that an appeal will suceed when, among other things, this decision is evaluated in the context of larger prison systems with magnified problems of security and disruption.

5. Defendants will suffer irreparable harm by a failure to grant a stay in that any attempt by Defendants to apply the Court's standards will result in confrontation of a dangerous variety and expense which it can never recover. They

will also be exposed to problems involved providing resources to permit publication. See for example Telefix v. Brunswick, 294 F. Supp. 256 (1968).

6. As a minimum, Defendants must be afforded sufficient time to make a systemwide evaluation of whether it can continue to support any inmate publication regardless of editorial content.

7. Enforcement of this order will have a chilling effect on First Amendment activity because nationally prison administrators will be reluctant to permit any new inmate publication.

It is clear that this court has broad discretionary power to grant a stay from its order and impose whatever conditions thereto are appropriate. International Brotherhood of Boilermakers v. Combustion Engineering, Inc., 337 F. Supp. 1349 (1971); Trans World Airlines v. Hughes, 314 F. Supp. 94 (1970).

In summary, Defendants suggest with all due respect that a stay frequently is and should be issued where, as here "the trial court is charting new and unexplored ground and the court determines that a novel interpretation of the law may succumb to appellate review". Stop H-3 Assn. v. Volpe, 353 F. Supp. 14 (1972).

Dated at Montpelier, Vermont, this 9th day of October, 1974.

Respectfully submitted,

KIMBERLY B. CHENEY
Attorney General
State of Vermont

By:

/s/ Alan W. Cook

ALAN W. COOK
Assistant Attorney General
Department of Corrections
State Office Building
Montpelier, Vermont 05602
(802) 828-2452

CERTIFICATE OF SERVICE

This is to certify that on the 9th day of October, 1974, I served a copy of the Above Defendants' Motion for Reconsideration of Summary Judgment and Motion for Stay and Memorandum in Support with a copy of this Certificate appended thereto, on the Plaintiffs in this matter, by mailing a true conformed copy thereof in a sealed envelope, first-class postage prepaid to Richard S. Kohn, Esq., American Civil Liberties Union of Vermont Inc., State Street, Montpelier, Vermont 05602.

/s/ Alan W. Cook

ALAN W. COOK
ASSISTANT ATTORNEY GENERAL
DEPARTMENT OF CORRECTIONS

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF VERMONT

THE LUPARAR; JOHN SHUTTLE, EDITOR OF LUPARAR; CRAIG MURRAY, individually and on behalf of all others similarly situated,	)	
Plaintiffs,	)	
v.	)	Civil Action File No. 73-95
R. KENT STONEMAN, individually and as Commissioner of the Department of Corrections of the State of Vermont; MICHAEL MOEYKENS, individually and as acting Warden of the Vermont State Prison at Windsor, Vermont,	)	
Defendants.	)	

AFFIDAVIT

STATE OF VERMONT)
) ss.
COUNTY OF WASHINGTON)

I, Kent Stoneman, being under oath, do hereby depose and say:

I am Commissioner of the State of Vermont Department of Corrections. On the date I received a copy of the decision of this Court in the matter of The Luparar; John Shuttle, Editor of The Luparar, Craig Murray v. R. Kent Stoneman, et al., I also learned for the first time that since the change of Wardens at the Vermont State Correctonal Facility - Windosr some interest had developed in publishing another inmate newspaper. The new Warden, apparently unaware of

the existence of The Luparar litigation, had, I was advised, orally indicated some willingness to certain inmates to allow a publication as long as it complied with guidelines quite similar to those being litigated in The Luparar. There was apparently some willingness by the inmates to comply with these guidelines. I am advised that this paper is only in the formative stages, and I have no knowledge whatever of the substantive content thereof. However, I have advised the Deputy Warden that no further steps may be taken to commence operations of this newspaper until we have had an opportunity to request the Federal Court to reconsider its decision dated September 30, 1974, and, until I can evaluate whether the Department can afford continued support to inmate publications.

In its Opinion in this case the Court found in effect that the publication, within its four corners, does not present a threat to security, order and rehabilitation at the prison. I respectfully must take issue with this conclusion. Based on my experience as a correctional administrator, it is my opinion that such personal attacks on staff through a vehicle which is state subsidized are highly capable and undoubtedly would, if permitted to continue over a period of time, provoke acts of retaliation by guards against inmates and vice-versa. It is indeed difficult to state that a specific article in itself presents an immediate danger to order. However, that

same article, when added to the normal frustrations and tensions of a prison atmosphere, may well create a very serious threat to security and order through retaliation at some indefinite time. The effects on rehabilitation by destroying inmate-staff communication are disastrous. I have a concern for the welfare of both staff and inmates at Windsor and other institutions in this Department. Tension between staff and inmates with the threat of retaliation is always a problem. However, this threat is greatly magnified when these attacks become public, and it is learned that the state is subsidizing them. In my opinion these personal attacks create unacceptable levels of danger to all concerned.

Dated at Montpelier, Vt., this 9th day of October, 1974.

/s/ R. Kent Stoneman
KENT STONEMAN

The above was subscribed and
sworn to before me in said County
this 9th day of October, 1974.

/s/ Alan W. Cook
NOTARY PUBLIC

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF VERMONT

THE LUPARAR, John Shuttle, Editor of The Luparar, Craig Murray, individually and on behalf of all others similarly situated,	*	
Plaintiffs,	*	
v.	*	
R. KENT STONEMAN, individually and as Commissioner of the Department of Corrections of the State of Vermont,	*	Civil Action File No. 73-95
JULIUS MOEYKENS, individually and as acting Warden of the Vermont State Prison at Windsor, Vermont,	*	
Defendants.	*	

MOTION UNDER RULE 70 OF FEDERAL RULES OF CIVIL PROCEDURE

Plaintiffs move pursuant to Federal Rules of Civil Procedure Rule 70 for an order enforcing its mandate in the above-captioned case and in support thereof avers:

1. That this Court entered judgment in the above action on September 30, 1974, and that said order contained a mandate enjoining the Defendants and their successors:

> "To cease suppression of the January 1973 issue of The Luparar, to return the copies of that issue that they seized to the editor and staff of The Luparar, to permit that issue to be mailed to subscribers outside the prison, to promulgate regulations dealing with the publication of the newspaper if there is continued

interest in publishing it, and to provide a review procedure in those regulations in accordance with that described earlier in this opinion."

2. That Federal Rules of Civil Procedure Rule 62 (a) provides that "unless otherwise ordered by the Court,". . . a "final judgment in an action for an injunction". . ."shall not be stayed during the period after its entry and until an appeal is taken or during the pendency of an appeal." This is an exception to the general rule that no execution shall issue upon a judgment or enforcement proceedings taken until the expiration of 10 days after its entry.

3. That the Court has not issued any order staying the effect of its mandate, and application has not been made for one.

4. That the Department of Corrections continues to suppress the January 1973 issue of the Luparar, refuses to return copies of the issue that they seized to the staff of the prison newspaper, refuses to permit the issue to be mailed to subscribers outside the prison, and has advised the inmates that they may not publish a newspaper, all of which were ordered by the court.

5. That there is continuing interest among the inmate population to publish a prison newspaper.

6. That the defendants have instructed the warden of

the Vermont State Prison not to return the confiscated issues of the Luparar or otherwise comply with the Court's mandate.

WHEREFORE, plaintiffs respectfully pray:

1. That the Court direct the Defendants to comply forthwith with the mandate in its opinion of September 30, 1974.

2. That, alternatively, the Court appoint a third person to enforce its order in accordance with Rule 70.

3. That, alternatively, the Court adjudge the Defendant Commissioner of Corrections in contempt of Court in accordance with Rule 70.

Dated at Montpelier, County of Washington, this 9 day of October, 1974.

/s/ Richard S. Kohn
Richard S. Kohn
American Civil Liberties
Union of Vermont, Inc.
43 State Street
Montpelier, Vermont

CERTIFICATE OF SERVICE

I, Richard S. Kohn, hereby certify that on October 9, 1974, I served a copy of the foregoing motion on the defendants by placing same in the United States mail, first class, postage prepaid and addressed to Alan Cook, Ass't. Attorney General, Dep't. of Corrections, State Office Building, Montpelier, Vermont.

/s/ Richard S. Kohn
Richard S. Kohn

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF VERMONT

The Luparar; John Shuttle, Editor of Luparar; Craig Murray, individually and on behalf of all others similarly situated	:	
v.	:	
R. Kent Stoneman, individually and as Commissioner of the Department of Corrections of the State of Vermont; Michael Moeykens, individually and as Acting Warden of the Vermont State Prison at Windsor, Vermont	:	Civil Action File No. 73-95

ORDER

The defendants have filed a motion alternatively for a new trial, rehearing or reargument of their motion for summary judgment and have requested a stay of this Court's Order dated September 30, 1974 pending a reconsideration of said motions.

Upon consideration of said motions, it is hereby ORDERED:

That this Court's Judgment Order entered on September 30, 1974 be, and the same hereby is, temporarily stayed pending a hearing on said motions and the further order of the Court in regard thereto.

Dated at Burlington in the District of Vermont, this 9th day of October, 1974.

/s/ Albert W. Coffrin
District Judge

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF VERMONT

THE LUPARAR; JOHN SHUTTLE, Editor of Luparar; CRAIG MURRAY, individually and on behalf of all others similarly situated,	)	
v.	)	
R. KENT STONEMAN, individually and as Commissioner of the Department of Corrections of the State of Vermont; JULIUS MOEYKENS, individually and as acting Warden of the Vermont State Prison at Windsor, Vermont	)	Civil Action File No. 73-95

MEMORANDUM IN RESPONSE TO
PLAINTIFFS' MOTION UNDER RULE 70

Defendants oppose Plaintiffs' Motion dated October 9, 1974. Counsel has learned in conversations with the office of the Clerk of this Court, however, that this Motion was not filed until October 10, 1974, and that the Court had already on October 9 granted Defendants a stay of the September 30 decision. The following grounds of defense are applicable:

1. Defendants had requested and been granted a stay of the September 30 judgment prior to the filing of Plaintiffs' Motion for contempt. Thus, the judgment has ceased to be operative, and there can be no contempt.

2. The decision of September 30, 1974, is not an injunc-

tion which the defendants have failed to follow, but rather a judgment or an advisory determination with which Defendants were expected to comply within a reasonable period--not less than 10 days. The Opinion in this case was not received in the Department of Corrections until 3:40 p.m. on October 2, 1974, and notwithstanding the intervention of a weekend, Defendants had prepared and filed a request for reconsideration and obtained a stay less than seven days later. The normal period allowed for compliance with a judgment is 10 days. Assuming arguendo that this decision was an injunction, Defendants were entitled to a reasonable amount of time to comply with it and have exercised their right to apply to the court for a construction of its terms because they are in doubt relative to its application, scope and constitutionality. New Jersey v. New York, 296 U.S. 259, 80 L.Ed. 214, 56 S. Ct. 188; Walker v. Birmingham, 338 U.S. 307 18 L.Ed.2d 1210, 87 S. Ct. 1824. By its terms the decision involves the development of Department rules and regulations--matters which obviously require careful drafting and less than immediate response. Thus, there can be no contempt.

3. Defendants without fault on their part are unable to effectively and adequately comply with the Court's Order in its present form for the numerous legal and practical reasons

discussed in their Motion for reconsideration filed October 9, 1974. Their request for reconsideration and/or modification is a good faith effort to bring the problems with this Order to the attention of the Court, and there can thus be no contempt. It is obvious that Defendants can as a matter of right petition the Court within a reasonable period for the modification, clarification or construction of any order. McCoomb v. Jacksonville Paper Co., 336 U.S. 187, 93 L.Ed. 599, 69 St. Ct. 497; Socony Mobil Oil Co. v. Northern Oil Co., 126 Vt. 160, 225 A.2d 60. This is obviously preferable as a matter of judicial policy to inadequate or imperfect compliance.

4. The decision or Order of September 30 is indefinite and unclear for the reasons discussed in Defendants' Motion to reconsider. There thus can be no contempt because the Order must be clear, concise, certain and spell out in specific terms what duties and obligations are imposed, and what rights are retained. Berry v. Middletown, 104 F.2d 107, 122 ALR 1341, cert dismd. 308 U.S. 629, 84 L.Ed. 525, 60 S. Ct. 297; International Longshoremen's Assoc. v. Philadelphia Maine Trade Assoc., 389 U.S. 64, 19 L.Ed.2d 236, 88 S. Ct. 208.

5. Plaintiffs have made no allegations either that Defendants have defied the Order of the Court or that Plaintiffs have been deprived of some substantial right during the less than seven day period Defendants took to review the judgment and file motions. Leitch v. New York C.R., 388 Ill. 236,

58 NE 2d 16, 155, ALR 835. Thus, there can be no contempt.

6. Plaintiffs suggest a third party is necessary to carry out the Court's order. This is unnecessary and undesirable now that the Order has been temporarily stayed.

WHEREFORE, Defendants move that Plaintiff's Motion Under Rule 70 be denied.

Dated at Montpelier, Vt., this 11th day of October, 1974.

Respectfully submitted,

KIMBERLY B. CHENEY
Attorney General
State of Vermont

By:
/s/ Alan W. Cook
ALAN W. COOK
Assistant Attorney General
Department of Corrections
State Office Building
Montpelier, Vermont 05602
(802) 8282452

CERTIFICATE OF SERVICE

This is to certify that on the 11th day of October, 1974, I served a copy of the above Defendants' Memorandum in Response to Plaintiffs' Motion Under Rule 70 with a copy of this Certificate appended thereto, on the Plaintiffs in this matter, by mailing a true conformed copy thereof in a sealed envelope, first-class postage prepaid to Richard S. Kohn, Esq., American Civil Liberties Union, 43 State Street, Montpelier, Vermont 05602.

/s/ Alan W. Cook
ALAN W. COOK
Assistant Attorney General

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF VERMONT

THE LUPARAR; JOHN SHUTTLE, EDITOR OF THE LUPARAR; CRAIG MURRAY, individually and on behalf of all others similarly situated,	:	
Plaintiffs,	:	
v.	:	Civil Action File No. 73-95
R. KENT STONEMAN, individually and as Commissioner of the Department of Corrections of the State of Vermont; JULIUS MOEYKENS, individually and as acting warden of the Vermont State Prison at Windsor, Vermont	:	
Defendants.	:	

PLAINTIFFS' MEMORANDUM IN OPPOSITION TO DEFENDANTS' MOTION FOR RECONSIDERATION OF SUMMARY JUDGMENT AND MOTION FOR STAY

INTRODUCTION

This action for declaratory and injunctive relief was commenced on March 26, 1973. On May 10, 1974, the defendants filed a Motion for Summary Judgment. These motions were accompanied by affidavits. On June 8, 1974, plaintiffs moved for cross summary judgment. On September 30, 1974, the court issued an opinion and order granting plaintiffs' Motion for Summary

Judgment. In a specifically worded mandate, the court enjoined the defendants to return the confiscated issue of the Luparar and permit its distribution, promulgate regulations governing future publication and set up a review procedure.

On October 9, 1974, the defendants filed a motion in the alternative for new trial, rehearing or re-argument. An accompanying memorandum was critical of the standards enunciated by the court pertaining to the circumstances under which censorship may be imposed, when state support may be withdrawn and when a newspaper can be prevented from commencing operations. Finally, the defendants request a stay of the court's judgment pending appeal.

Since Rule 60(b) specifically provides that a motion under it does not affect the finality of a judgment or suspend its operation, plaintiffs treat these motions as having been made under Rule 59(a).

> 1. Defendants' motion for new trial, re-hearing or re-argument on the merits should be denied.

Rule 59(a) provides that a "new trial may be granted to all or any of the parties and on all or part of the issues...

> "(2) in an action tried without a jury, for any of the reasons for which rehearings have heretofore been granted in suits in equity in the courts of the United States. On a motion

> for a new trial in an action tried without a jury, the court may open the judgment if one has been entered, take additional testimony, amend findings of fact and conclusions of law or make new findings or conclusions, and direct the entry of a new judgment."

The scope of the rule is explained by Professor Moore as follows:

> "Just as at law, a rehearing in equity and its present counterpart, a new trial in a court action, will not lie merely to relitigate old matter; nor will a new trial normally be granted to enable the movant to present his case under a different theory than he adopted at the former trial. As a practical matter, in equity formerly and in court actions now, three grounds for new trial are most commonly known: for manifest error of law or fact, and for newly discovered evidence." 6A J. Moore, Federal Practice, para. 59.07 at 93-95 (2d Ed. 1974) (Footnotes omitted)

Neither a new trial nor re-argument would be appropriate in the instant case because the court did not commit any manifest error of fact or law nor is there any newly discovered evidence.

(a) The court did not commit manifest error of law

It is well established that to justify a new trial on this ground, the error alleged must be a manifest misapprehension of the law. Solar Laboratories v. Cincinnnati Advertising Products Co., 34 F. Supp. 783 (S.D.Ohio 1940). This may occur when, subsequent to the court's decision, a higher court reaches

a contrary result. Cf. In re Tucker, 148 F 928 (D. Mass. 1905). However, it has been held not to be manifest error justifying rehearing where the Supreme Court rendered a decision allegedly "defining more clearly" the law relating to one of the issues in a lower court case. Solar Laboratories, supra,; Pioneer Paper Stock Co. v. Miller Transport Co., 109 F. Supp. 502, 504 (D.N.J. 1953).

Wolff v. McDonnell, 94 S.Ct. 2963 (1974), quoted by the defendants on page 2 of their memorandum, is in no way inconsistent with this court's opinion. The only First Amendment issue before the court was the narrow one of "Whether letters determined or found to be from attorneys may be opened by prison authorities in the presence of the inmate and whether such mail must be delivered unopened if normal detection techniques fail to indicate contraband." Id. at 2984.

In rejecting the inmates' First Amendment argument, the Court specifically acknowledged the distinction between censorship and inspection for contraband. The Court said:

> "To begin with, the constitutional status of the rights asserted, as applied in this situation, is far from clear. While First Amendment rights of correspondence with prisoners may protect against the censoring of inmate mail, when not necessary to protect legitimate governmental interests, see Procunier v. Martinez, ___ U.S. ___ (1974), this Court has not yet recognized First Amendment rights

> of prisoners in this context. Cf. Cruz v. Beto, supra, Cooper v. Pate, supra. Furthermore, freedom from censorship is not equivilant to freedom from inspection or perusal." Id. at 2984.

The language quoted by the defendants on page 2 of their memorandum to portray "a true portrait of life in prison" takes on a special meaning in the context of prison disciplinary proceedings. As the Court pointed out:

> "The reality is that disciplinary hearings and the imposition of disagreeable sanctions necessarily involve confrontations between inmates and authority and between inmates who are being disciplined and those who would charge or furnish evidence against them. Retaliation is more than a theoretical possibility; and the basic and unavoidable task of providing reasonable personal safety for guards and inmates may be at stake, to say nothing of the impact of disciplinary confrontations and the resulting escalation of personal antagonisms on the important aims of the corrections process.
>
> Indeed, it is pressed upon us that the proceedings to ascertain and sanction misconduct themselves play a major role in furthering the institutional goal of modifying the behavior and value systems of prison inmates sufficiently to permit them to live within the law when they are released."
> Id. at 2978. (emphasis supplied)

The defendants would transport this reasoning, root and branch, to censorship of prison newspapers. Commissioner Stoneman's affidavit is carefully couched in terms of retaliation against

prisoners by guards. But his admission that such retaliation might occur "at some indefinite time" demonstrates that his concern is merely a "theoretical possibility."

Moreover, the Court was obviously aware in Procunier v. Martinez, 94 S.Ct. 1800 (1974), that a prison is "a closed, tightly controlled environment peopled by those who have chosen to violate the criminal law and who have been lawfully incarcerated for doing so. Wolff v. McDonnell, 94 S.Ct., supra, at 2977. Yet it upheld the right of prisoners to make the same kind of disparaging and critical remarks about prison personnel in private correspondence as are at issue here. While the Commissioner makes the unexplained assertion in his affidavit that the threat of retaliation "is greatly magnified when these attacks become public, and it is learned that the state is subsidizing them," there is nothing in Wolff to suggest that public reaction is a legitimate reason to curb criticism.

The defendants' only argument that the court committed "manifest error of law" is their disagreement with the court's application of Procunier v. Martinez, supra, to a prison newspaper. They are presumptuous in suggesting that "the court somehow mistakenly believed that the Luparar was not a "mass mailing." Defendants' memorandum p. 3. Their attempt to

reargue the issues passed upon by the court falls outside the scope of Rule 59 and their motion for new trial or reargument on this ground should be denied.

(b) There is no newly discovered evidence which would justify a new trial.

The grant or denial of a timely motion for a new trial under Rule 59 on the ground of newly discovered evidence rests within the discretion of the trial court. 6A J. Moore, Federal Practice, Para. 59.08(3) at 113-114.

> "To constitute newly discovered evidence for which a new trial may be granted under Rule 59, the evidence must pertain to facts in existence at the time of the trial, and not to facts that have occurred subsequently. . . . To warrant a new trial the evidence must not have been known to the movant at the time of the trial; and, moreover, the movant must have been excusably ignorant of the facts i.e., the evidence must be such that it was not discoverable by diligent search. 6A J. Moore, Federal Practice, Para. 59.08(3) at 115.

The burden upon the party seeking a new trial for "newly discovered evidence" is said to be a substantial one. Martin v. Klein, 172 F. Supp. 778 (D. Mass. 1959); Ionian Shipping Co. v. Tyson Shipping Co., 49 F.R.D. 334, 337 (S.D.N.Y. 1969). A new trial is not warranted unless the evidence, if it had been presented at the former trial, would probably have

produced a different result. Fisher Studio, Inc. v. Loew's Inc., 232 F.2d 199 (2d Cir. 1956) cert. denied 352 U.S. 836 (1956); Pioneer Paper Stock Co. v. Miller Transport Co., 109 F. Supp. 502, 504 (D.N.J. 1953).

In paragraph 4 of their memorandum, the defendants argue that the court lacked a factual basis to grant a summary judgment against the defendants. They criticize the court's opinion because it does not contain findings of fact relative to the atmosphere in the prison in January 1973 and, apparently, wish to put on evidence of "the actual situation relative to security." Defendants' memorandum p. 6.

Summary judgment may be granted, of course, only where there is no genuine dispute as to any material fact. F.R.Civ.P. 56. In this case there were none. The evidence before the court included the depositions of Acting Warden Moeykens and Commissioner Stoneman as well as other documentary evidence from the Corrections Department. The defendants were free to supplement the record at any time, and they did so on May 16, 1974 and July 12, 1974. Finally, defendants seem to forget that it was they who moved for summary judgment, obviously believing that the court had before it all the information upon which to make a decision. It should also be noted that Commissioner Stoneman's

affidavit is wholly inadequate to satisfy the court that there is any basis for granting a motion for new trial. Marshall's U.S. Auto Supply v. Cashman, 111 F.2d 140, 141 (10th Cir. 1940) cert denied 311 U.S. 667 (1940); 6A J. Moore, Federal Practice, 59.08(3) at 122 (2d ed. 1974). Whatever evidence the defendants now wish to present was available to them at the time they moved for summary judgment or was available to them by "diligent search." This is not "newly discovered evidence" as contemplated by Rule 59.

To the extent that defendants' argument in paragraph 4 of their memorandum is a criticism of the court for failing to make findings of fact, it is without merit. Findings of fact are unnecessary when summary judgment is granted under Rule 56. F.R.Civ.P. 52(a).

> (c) The standards enunciated by the court are perfectly adequate to inform the defendants of their responsibilities and further guidelines are unnecessary.

In paragraph 3 of their memorandum, the defendants criticize the standards fashioned by the court on the grounds that they give insufficient guidance to them with respect to three questions:

> "(a) When a prospective issue of the Luparar or parts thereof may be censored or suppressed; (b) when

> state support for the Luparar or a substitute newspaper can be withdrawn and (c) when a newspaper may be prevented from commencing operations."

Simply by posing these questions, the Department raises serious questions concerning its intentions to attempt good faith compliance with the court's mandate.

The first question was answered definitively by the court. With respect to the January 1973 issue of the Luparar, the court said:

> "The Court has examined the articles in question, and while it does not in any way approve of their tone and content, it does not find that they threaten the governmental interests of security, order and rehabilitation, either individually or collectively. The basis for the objections of the State to such articles are similar to the basis for the mail censorship struck down by the Supreme Court in Procunier v. Martinez, supra. The fact that an article is critical, attacks personalities, or is even defamatory, is not a sufficient reason standing alone to suppress the publication in which it appears."
> Opinion of Judge Coffrin, p. 9.

It is difficult to imagine how the court could have made its intention more clear.

The next two questions are the harbingers of a dismal future for the Luparar: the Commissioner asks the court to set out explicit guidelines for termination. To appreciate the full

impact of the Commissioner's inquiry, it must be recognized that he has, in the past, articulated his "absolute" support of an inmate publication. Deposition of Commissioner Stoneman, June 26, 1973, p. 43. In a letter dated July 10, 1973, Commissioner Stoneman stated:

> "In line with my testimony at my deposition, I remain willing to discuss with you the problems surrounding the publication of the Luparar. I will continue to favor the existence of a facility newspaper, if published under reasonable and well-defined guidelines, and will authorize the Facility to cooperate in the printing of such paper if agreement can be reached with you concerning these guidelines." (emphasis supplied)
> Filed with the court as Annex "C" accompanying Affidavit of Richard S. Kohn dated June 10, 1974.

Now, however, the Commissioner describes an "immediate situation" to illustrate how the court's decision fails to provide him with standards for withdrawing financial support for the paper.

Apparently, the new warden at the prison has undertaken, on his own authority, to permit the prisoners to publish a newspaper under guidelines similar to those now declared unconstitutional. The warden did not know about the Luparar litigation and the Commissioner did not know that the warden was encouraging the prisoners to publish a paper. Commissioner

Stoneman is concerned that if he stops publication at this point for financial reasons, his perfectly legitimate motives might be misconstrued. This, he fears, will culminate in more litigation. Affidavit of Commissioner Stoneman and Defendants' memorandum, p.4.

First, the situation posed by the Commissioner is purely hypothetical. His affidavit does not aver that his budget will not support the thirty dollars per month required to put out an issue of the Luparar.

Secondly, no guidelines that this court can issue will resolve the question. If the Commissioner vetoes the efforts of the Warden to publish a newspaper, a factual question will be created as to whether the reasons are actually a cynical subterfuge for censorship.

Thirdly, the breakdown in communications between the Commissioner and the Warden is of no concern to this court.

The Commissioner also complains that the court has not adequately spelled out the circumstances under which an article may be suppressed and foresees an endless round of litigation. He illustrates his point that the absence of detailed guidelines will "doom" the Department to "continuous and expensive" litigation by making reference to the plaintiffs' motion to compel compliance with the court's order of September 30.

As discussed above, plaintiffs believe that the Department should be able to make certain deductions from the court's decision concerning issue Number 12 of the Luparar that will aid it in making decisions on specific articles in the future. If the Department does not approach its task in good faith, it is correct to assume that there will be further attempts to secure compliance. However, the example it has chosen to make its point is singularly inappropriate.

This court entered its opinion and mandate on September 30, 1974. Rule 62(a) provides that in an action for an injunction, the judgment order takes effect upon entry. The court may issue a stay, but the ten day waiting period applicable to other actions does not apply.

The court's mandate contained a specific direction that the Department return confiscated copies of the Luparar to the staff and permit them to be mailed to subscribers. On or about October 5 this attorney spoke to attorney Bristow and was told that no decision had been made about compliance. Thereafter, I was informed by inmates that the warden had told them that he was under instructions from Montpelier not to comply. (This was subsequently confirmed by Commissioner Stoneman's affidavit). On or about October 8 I advised Attorney Cook that since no stay had been requested, I would seek enforcement of the court's mandate. This was done on October 9th, the same

day the various motions now before the court were served on the plaintiffs.

Rule 62 is plain in its language and meaning. Nine days after the court's order no stay had been requested. For the defendants to suggest that plaintiffs' motion seeking compliance is indicative of continued litigation caused by the absence of ascertainable standards in the court's opinion is specious.

If the Corrections Department acts with dispatch in setting up the review procedure ordered by the court, and if the review board acts with maturity and in good faith in exercising the censorship power, there is no reason to expect that there will be a proliferation of litigation. The argument advanced by the Department is the timeworn one that if due process rights are granted prisoners, the system will be flooded with appeals and litigation. This apprehension has not proven out in practice. See Bowers v. Smith, 353 F. Supp. 1339 (D.Vt. 1972) (due process rights for prisoners prior to segregation).

2. Defendants' Motion for Stay Pending Appeal should be denied

The defendants also move for a stay of the court's mandate pending appeal. The granting of stays in the inferior federal courts is a matter committed to the judicial discretion. See generally, 7 J. Moore, Federal Practice, para. 62.05 at 62-19;

62-20 (2d ed. 1973); Puqach v. Dollinger, 280 F.2d 521 (2d Cir. 1960); Ideal Toy Corp. v. Sayco Doll Corp., 302 F.2d 623, 625 (2d Cir. 1962). However, the accepted test for the informed exercise of that discretion is that applicable to the granting of preliminary injunctions.

> "In the case of a final injunction, mandatory in character, there may be circumstances in which the doing of the act mandated by the injunction order will make it impossible to restore the status quo in the event that the order is reversed on appeal. In such circumstances the criteria to be employed in determining whether to stay the order are much the same as would be employed on application for a preliminary injunction." 7 J. Moore, Federal Practice, para. 62.05 at 62-24.

That standard includes the following elements:

1. The likelihood that the petitioner will prevail on the merits of the appeal;

2. Irreparable injury to the petitioner unless the stay is granted;

3. No substantial harm to other interested parties;

4. No harm to the public interest.

While some courts have held that the absence of any one of these will defeat the requested stay, Williams v. Phillips, 482 F.2d 669 (D.C.Cir. 1973); Doe v. Israel, 482 F.2d 156 (1st Cir. 1973), the Second Circuit seems to follow the rule

that each is but one factor to be considered in relation to the others. Cf. Unicon Management Corp. v. Koppers Co., Inc., 366 F.2d 199 (2d Cir. 1966). Plaintiffs pass to a consideration of these seriatim.

(a) It is likely that the defendants will not be successful on the merits if they appeal

The defendants argue that reversal is highly probable when the court's decision is "evaluated in the context of larger prison systems with magnified problems of security and disruption." Defendants' memorandum p. 7, #4. But the size of the facility cannot displace the logic of the court's decision. Thus, in Procunier v. Martinez, supra, a case involving a large prison system, the Court said:

> "Appellants have failed to show that these broad restrictions on prisoner mail were in any way necessary to the furtherance of a governmental interest unrelated to the suppression of expression..... Appellants contend that statements that "magnify grievances" or "unduly complain" are censored "as a precaution against flash riots and in the furtherance of inmate rehabilitation...." But they do not suggest how the magnification of grievances or undue complaining, which presumably occur in outgoing letters, could possibly lead to flash riots, nor do they specify what contribution the suppression "of complaints makes to the rehabilitation of criminals. And, appellants defend the ban against "inflammatory political, racial or religious or other views" on the ground that "(s)uch matter clearly presents a

> danger to prison security...." Brief of Appellants, 21. The regulation, however, is not narrowly drawn to reach only material that might be thought to encourage violence nor is its application limited to incoming letters. In short, the Department's regulation authorized censorship of prisoner mail far broader than any legitimate interest of penal administration demands and were properly found invalid by the District Court." Procunier v. Martinez, 94 S.Ct. supra, at 1812-13.

This description fits precisely the defendants arguments here. Their allegations that "any attempt in good faith by defendants to apply and construe this decision will result in immediate turmoil" and a "confrontation of a dangerous variety" are completely unsupported. This is particularly true of the January 1973 issue of the Luparar. It is undisputed that the January issue was freely distributed within the prison and there is no evidence that it resulted in disruption. Procunier suggests that constitutional analysis in cases such as this may be affected by the facts. But the facts as presented to the court in the depositions of Commissioner Stoneman and Acting Warden Moeykens fully support the court's ruling.

Nothing in the record or in any subsequent Supreme Court cases suggests that the court's application of the principles developed in Procunier to this case was error. In fact, Wolff v. McDonnell, supra, expressly recognizes due process rights of

prisoners in disciplinary cases even though the Court was alert to the security problems created by such hearings. Wolff, 94 S.Ct., supra, at 2978. The review procedure ordered in the context of this case is of an entirely different nature completely lacking the explosive quality of disciplinary proceedings.

> (b) The defendants will not be irreparably injured if the stay is not granted but the plaintiffs will be irreparably injured in the event that a stay is granted

Apparently, defendants' claim of irreparable harm is premised on its contention that any attempt by them to apply the court's standards will result in "confrontation of a dangerous variety" and expense which it can never recover. They also claim that the Department will be "exposed to problems" in providing resources to permit publication.

Analysis is aided by separating the two issues in the case. First, as to the January 1973 issue of the Luparar, it is difficult to see how any of these alleged concerns are germane. This court has already ruled that there is nothing in that issue that would compromise security. There is no conceivable way in which the defendants would be irreparably injured by complying fully with the court's mandate.

With respect to future issues, there is simply no reason to believe that good faith compliance with this court's order would lead to "confrontation of a dangerous variety." The whole purpose of a preview procedure is to insure that disputes over particular articles are systematically reviewed. And the prison officials are already on notice that the type of article that appeared in the January 1973 issue may not be proscribed.

Moreover, it should not go unnoticed that when a dispute arose over the Luparar, the prisoners resorted to the courts for vindication of their claims rather than to violent confrontation. A stay of the court's order at this juncture will serve to reaffirm their cynicism that the system thwarts them even when they prevail.

Nor are the alleged fiscal concerns persuasive. The harm to the Corrections Department would only be irreparable if the cost of such an enterprise threatened to bankrupt the system. The estimated expense for putting out an issue of the Luparar is only $30.00. This would hardly constitute irreparable harm to an institution whose annual budget is in the hundreds of thousands of dollars.

The Commissioner's concerns expressed in his affidavit are entirely too emphemoral to warrant a finding of irreparable injury.

On the other hand, the effect of a stay would plainly result in irreparable damage to the plaintiffs. The premise of this court's opinion was that absent some legitimate governmental interest of security, rehabilitation and order, subscribers have a First Amendment right to receive the Luparar. This litigation was commenced in March, 1973. For a year and a half, the inmates refused to publish a newspaper under the guidelines (Now declared unconstitutional) imposed by the Corrections Department. Defendants cavalierly state that after so long a time, further delay is inconsequential. This attitude demonstrates total insensitivity to the importance of the First Amendment to the fabric of our society.

The court's opinion opens up lines of communication between inmates and the "free world." Those lines have been severed for over eighteen months. The interest of subscribers to receive this intelligence far outweighs the disembodied fears of the Corrections Department as set forth in Commissioner Stoneman's affidavit.

(c) There is no evidence to support the defendants' argument that the effect of the court's decision will be to chill the effect of First Amendment rights in other prison systems

The third criterion for determining whether to issue

a stay is whether the failure to do so would cause substantial harm to other interested persons. Defendants make the astonishing suggestion that unless a stay is granted, "nationally prison administrators will be reluctant to permit any new inmate publication."

In Belcher v. Birmingham Trust National Bank, 395 F.2d 685 (5th Cir. 1968), the appellant moved for a stay of an order to dissolve two partnerships. The appellant argued that the dissolution would affect hundreds of people employed by the parent corporation. The court found the averment insufficient to justify a stay:

> "We have found nothing to support the ultimate conclusion that appellants would be irreparably harmed by dissolving the partnerships, and the assertion that the corporate employees might be adversely affected (which has no relevancy) seems, in any event, to be a remote and future consequence since the corporation has not been ordered dissolved."
> (ital. and parentheses in original)

The Department's concern for the First Amendment activities of prisoners in other institutions across the country is commendable, but irrelevant to whether a stay should be granted in this case. The effect of the decision on other prisoners is is a consequence even more remote than that presented to the court in Belcher. The grant of a stay would, however, sub-

stantially interfere with the rights of the subscribers to the Luparar who are similarly situated to plaintiff Craig Murray. The court has recognized their right to receive the publications and the information touching prison matters contained therein.

(d) The public interest militates against the grant of a stay

The "public interest" is an elusive concept at best. Defendants maintain that:

> "The issues of law decided in this case involve serious legal questions about which the authorities are in disagreement, and it is in the public interest to have the law settled before any relief issues."

Beyond its bald statement, the defendants do not explain why the public interest demands that no relief issue until the appellate process is exhausted. Nor do the defendants cite any case or any other source in support of its contention that the "authorities" are in disagreement. As far as the plaintiff is aware, this is the first case to have considered the question. In any event, a difference in opinion among the courts would not, in itself, justify a stay of the court's judgment. This reasoning would mean that no relief can issue before the issue is finally resolved by the United States Supreme Court, several years hence.

The Luparar is a legitimate vehicle by which inmates are

attempting to educate the public about conditions within the correctional facility at Windsor. If, on occasion, this means extreme attacks upon personalities, this is part of the experiment in free expression. If the style is abrasive, it should be remembered that the men contributing to the paper for the most part lack the educational advantages of those in authority over them. Whatever the shortcomings of the Luparar, the public interest lies in the free flow of information from those incarcerated to those who are interested in finding out what is going on inside our prisons.

CONCLUSION

For the foregoing reasons, the defendants' motions for new trial, re-argument or re-hearing, and their motion for a stay pending appeal, should be denied.

Dated: October 17, 1974

/s/ Richard S. Kohn
Richard S. Kohn
American Civil Liberties
Union of Vermont, Inc.
43 State Street
Montpelier, Vermont

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF VERMONT

The Luparar; John Shuttle, Editor of Luparar; Craig Murray; individually and on behalf of all others similarly situated	:	
v.	:	
R. Kent Stoneman, individually and as Commissioner of the Department of Corrections of the State of Vermont; Michael Moeykens, individually and as Acting Warden of the Vermont State Prison at Windsor, Vermont	:	Civil Action File No. 73-95

AMENDED OPINION AND ORDER
AND ORDER

The following three motions came on for hearing on November 18, 1974:

(1) Defendants' motion for a new trial, rehearing or reargument of defendants' motion for summary judgment;

(2) Defendants' motion for a stay of execution pending the taking or pendency of appeal in the event that the above motion is denied; and

(3) Plaintiffs' motion under Rule 70 of the Federal Rules of Civil Procedure for an order enforcing its mandate.

Following a discussion with counsel for the parties at said hearing the Court now believes that the cause of justice would be better served in this matter if those guide-

lines or regulations and review procedures set forth on pages 12 and 13 of its opinion of September 30, 1974, were considered to be indicative of the type of procedural due process which the Court believes would provide the first amendment safeguards necessary for the publication and distribution of a prison newspaper rather than a strict mandate as to how the defendants or their successors should proceed in this regard. The Court also believes that the defendants should be allowed additional time and latitude in developing and implementing appropriate procedural safeguards in accordance with the Court's opinion if an inmate newspaper is to be published and distributed at the State Prison. The Court expects the defendants to act expeditiously in this regard but does not wish to deprive either party of the right to promptly appeal the Court's decision. For that reason, the Court does not wish to retain jurisdiction of this cause pending the development and implementation of such safeguards by the defendants or their successors. In proceeding in this manner, the Court is cognizant that it may not have put this phase of the matter to rest but expects that the parties, acting in good faith, may well be able to accomplish themselves what the Court has indicated it deems necessary. Failing such a resolution of the problem within a reasonable time, the Court expects this

aspect of the matter may again be laid at its feet for a more definitive determination.

Based on said discussion, said motions, the memoranda of law and arguments of counsel, it is hereby ORDERED:

(1) That the language set forth on pages 12 and 13 of this Court's September 30, 1974, opinion with reference to the guidelines or regulations for the publication of a prison newspaper and for a review procedure of material submitted for publication therein shall be construed as suggestions only as to the type and nature of due process which the Court would find acceptable to safeguard first amendment rights and shall not be interpreted as a mandate with which defendants need comply exactly. To the extent necessary to effect this change, the language of the opinion may be considered amended accordingly.

(2) That this Court's order filed September 30, 1974, is amended to read as follows:

WHEREFORE, defendants or their successors are hereby ORDERED:

> To cease suppression of the January, 1973, issue of The Luparar, to return the copies of that issue that they seized to the editor and staff of The Luparar and to permit that issue to be mailed to subscribers outside the prison.

(3) That defendants' motion for a new trial, rehearing or reargument of defendants' motion for summary judgment is denied.

(4) That this Court's temporary stay of execution issued October 9, 1974, is dissolved and defendants' motion for a stay of execution pending the taking and pendency of an appeal is denied.

(5) That plaintiffs' motion under Rule 70 of the Federal Rules of Civil Procedure for an order enforcing its mandate is denied.

Dated at Burlington in the District of Vermont this 21st day of November, 1974.

/s/ Albert W. Coffrin
District Judge

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF VERMONT

THE LUPARAR; JOHN SHUTTLE; Editor of Luparar; CRAIG MURRAY; individually and on behalf of all others similarly situated,	)	
v.	)	Civil Action File No. 73-95
R. KENT STONEMAN, individually and as Commissioner of the Department of Corrections of the State of Vermont; MICHAEL MOEYKENS, individually and as Acting Warden of the Vermont State Prison at Windsor, Vermont	)	

NOTICE OF APPEAL

Notice is hereby given that the above captioned Defendants hereby appeal to the United States Court of Appeals from the Opinion and Order of the United States District Court for the District of Vermont dated November 21, 1974, which among other things affirms in part and amends in part its Order of September 30, 1974, and dissolves the stay of the September 30 Order granted October 9, 1974.

Dated at Montpelier, Vermont, this 27th day of November, 1974.

Respectfully submitted,

KIMBERLY B. CHENEY
Attorney General
State of Vermont

By:
/s/ Alan W. Cook
ALAN W. COOK
Assistant Attorney General
Department of Corrections
State Office Building
Montpelier, Vt. 05602
828-2452

CERTIFICATE OF SERVICE

This is to certify that on the 27th day of November, 1974, I served a copy of the above Defendants' Notice of Appeal with a copy of this Certificate appended thereto, on the Plaintiffs in this matter, by mailing a true conformed copy thereof in a sealed envelope, first-class postage prepaid to Richard Kohn, Esq., American Civil Liberties Union, Inc., 43 State Street, Montpelier, Vermont 05602.

Dated at Montpelier, Vermont, this 27th day of November, 1974.

/s/ Alan W. Cook
ALAN W. COOK
Assistant Attorney General
Department of Corrections

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

THE LUPARAR, JOHN SHUTTLE, Editor of Luparar, CRAIG MURRAY, Individually and on behalf of all others similarly situated,	)	
Plaintiffs-Appellees,	)	
v.	)	
	)	Docket No. 74-2617
R. KENT STONEMAN, Individually and as Commissioner of the Department of Corrections of the State of Vermont, MICHAEL MOEYKENS, Individually and as Acting Warden of the Vermont State Prison at Windsor, Vermont,	)	
Defendants-Appellants.	)	

CERTIFICATE OF SERVICE

This is to certify that on the 24th day of February, 1975, I served a copy of the above Defendants-Appellants' Appendix, with a copy of this Certificate appended thereto, on the Plaintiffs-Appellees, in this matter by mailing a true conformed copy thereof in a sealed envelope, first-class postage prepaid to Richard S. Kohn, Esq., American Civil Liberties Union, Inc., 43 State Street, Montpelier, Vermont and Paul Berch, Esq., South Pomfret, Vermont 05067.

Robert L. Orleck

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